



## COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

### COUNCIL MEMBERS

Dennis Kennedy, Mayor  
Steve Tate, Mayor Pro Tempore  
Larry Carr, Council Member  
Mark Grzan, Council Member  
Greg Sellers, Council Member

### REDEVELOPMENT AGENCY

Dennis Kennedy, Chair  
Steve Tate, Vice-Chair  
Larry Carr, Agency Member  
Mark Grzan, Agency Member  
Greg Sellers, Agency Member

**WEDNESDAY, DECEMBER 7, 2005**

### AGENDA

### JOINT MEETING

### CITY COUNCIL SPECIAL AND REGULAR MEETING

and

### REDEVELOPMENT AGENCY SPECIAL MEETING

**6:00 P.M.**

*A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions; and a Special Redevelopment Agency Meeting is called at 7:00 P.M. for Conducting Redevelopment Agency Business.*

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**Dennis Kennedy, Mayor/Chairman**

### CALL TO ORDER

(Mayor/Chairperson Kennedy)

### ROLL CALL ATTENDANCE

(Deputy City Clerk/Deputy Agency Secretary Malone)

### DECLARATION OF POSTING OF AGENDA

**Per Government Code 54954.2**

(Deputy City Clerk/Deputy Agency Secretary Malone)

**6:00 P.M.**

## ***City Council Action and Redevelopment Agency Action***

### **CLOSED SESSION:**

**1.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 2

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**

### **RECONVENE**

### **CLOSED SESSION ANNOUNCEMENT**

**7:00 P.M.**

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **COMMENDATIONS**

Commendations for Police Personnel

*Kyle Christensen, Bill Norman, Rodney Krewson, Lynette Madruga, Michael Brookman, Nate Mazon  
Dave Myers, Rick Rodriguez, Mark Brazeal, Jerry Neumayer, Troy Hoefling, Dave Leonard, Shane Palsgrove,  
Max Cervantez, Mindy Zen, Sarah Savage*

### **INTRODUCTION**

Event Coordinator Debbie Lazzarino

*Interim Recreation and Community Services Manager, Rod Cooper*

### **CITY COUNCIL REPORT**

Mayor Pro Tempore Tate

### **CITY COUNCIL SUB-COMMITTEE REPORTS**

### **CITY MANAGER'S REPORT**

### **CITY ATTORNEY'S REPORT**

### **OTHER REPORTS**

### **PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND  
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

## City Council Action

### CONSENT CALENDAR:

#### ITEMS 1-13

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

#### Time Estimate

#### Page

Consent Calendar: 1 - 10 Minutes

1. [REQUEST FOR BANKING SERVICES](#).....8  
Recommended Action(s):  
  1. Award Contract for Banking Services to Bank of the West; and
  2. Authorize the City Manager to Execute a Contract with Bank of the West for Banking Services for Three Years, with an Option to Renew for Three Additional Years; Subject to Review and Approval by the City Attorney.
2. [APPROVE FILING GRANT APPLICATION FOR COMMUNITY PARK BASKETBALL COURT AND WATER CONSERVATION MEASURES](#).....9  
Recommended Action(s): Adopt Resolution Approving the Filing of an Application for Grant Funds for the Roberti-Z'Berg-Harris Block Grant Program under the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002.
3. [ACCEPTANCE OF TRAFFIC SIGNAL INSTALLATION AT TENNANT/HIGHWAY 101 SOUTHBOUND RAMPS PROJECT](#).....11  
Recommended Action(s):  
  1. Accept as Complete the Traffic Signal Installation at Tennant Avenue and Highway 101 Southbound Ramps Project in the Final Amount of \$501,491; and
  2. Direct the City Clerk to File the Notice of Completion with the County Recorder's Office.
4. [COURTHOUSE GARDEN CONCEPTUAL DESIGN](#) .....13  
Recommended Action(s): Appropriate \$10,600 from the Unappropriated Fund Balance in Water System Replacement Fund (653) for the Demonstration Water Conservation Garden Project, CIP #126005.
5. [CONSULTANT AGREEMENT WITH NAFFA INTERNATIONAL, INC. FOR OUTSIDE PLAN REVIEW SERVICES](#) .....14  
Recommended Action(s): Authorize the City Manager to Execute a Contract in the Amount of \$75,000; Subject to Review and Approval by the City Attorney.
6. [PURCHASE OF THE POLICE COMMUNICATIONS' DISPATCH VOICE LOGGING SYSTEM](#).....15  
Recommended Action(s): File Report on the Emergency Purchase of a Communications' Dispatch Voice Logging System from Capture Technologies for \$10,605.89.
7. [GENERAL FUND RESERVE POLICY](#) .....16  
Recommended Action(s): Direct Financial Policy Committee Recommendations Concerning General Fund Reserve Policy to City Council for Consideration at the January 2006 Retreat.

**Time Estimate**

**Consent Calendar: 1 - 10 Minutes**

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8. **AMENDED REIMBURSEMENT AGREEMENT WITH PRAVIN PATEL FOR 16995 CONDIT ROAD** .....17  
**Recommended Action(s):**
  1. **Approve** an Appropriation of \$4,549 from the Current Year Unappropriated Measure C – Capital Improvement Project Fund Balance for Reimbursements for Extra Work along the Southeast Frontage of 16995 Condit Road; and
  2. **Authorize** the City Manager to Execute the Amended Reimbursement Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.
  
9. **FINAL MAP FOR JASPER PARK PHASE I (TRACT 9732)** .....18  
**Recommended Action(s):**
  1. **Approve** the Final Map, Subdivision Agreement and Improvement plans;
  2. **Authorize** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City;
  3. **Authorize** the City Clerk to Sign the Final Map Authorizing Abandonment of Unused Easement; and
  4. **Authorize** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.
  
10. **RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE APPROVING AMENDMENT TO CONTRACT WITH CalPERS** .....19  
**Recommended Action(s):**
  1. **Adopt** Resolution Approving Amendment to Contract with CalPERS;
  2. **Authorize** the Mayor to Execute the Amendment to Contract Following Final Approval of the Ordinance; and
  3. **Waive** the Reading, and **Introduce** the Ordinance, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES.**
  
11. **ADOPT ORDINANCE NO. 1745, NEW SERIES** .....24  
**Recommended Action(s):** **Waive** the Reading, and **Adopt** Ordinance No. 1745, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXTENSION OF THE FINAL MAP SUBMITTAL DATE AND BUILDING PERMIT SUBMITTAL DATE, AND AN 8-MONTH EXTENSION for OBTAINING the BUILDING PERMIT DATE FOR 34 BUILDING ALLOCATIONS GRANTED FOR FISCAL YEAR 2005-2006 FOR MP-02-03: Tilton-Glenrock.**
  
12. **ADOPT ORDINANCE NO. 1746, NEW SERIES** .....29  
**Recommended Action(s):** **Waive** the Reading, and **Adopt** Ordinance No. 1746, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, - 002, -004, -005 & -007) (ZA-04-12: COCHRANE – DINAPOLI/BROWMAN).**

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<b>Consent Calendar: 1 - 10 Minutes</b>	

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|-----|---|----|
| 13. | <u><b>ADOPT ORDINANCE NO. 1747, NEW SERIES</b></u> .....43<br><b>Recommended Action(s):</b> <u><b>Waive</b></u> the Reading, and <u><b>Adopt</b></u> Ordinance No. 1747, New Series, and <u><b>Declare</b></u><br>That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title<br>and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE<br/> CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE<br/> CITY OF MORGAN HILL AND MORGAN HILL RETAIL VENTURE, LIMITED<br/> PARTNERSHIP, FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 66.5<br/> ACRES LOCATED IN THE CITY OF MORGAN HILL AT THE NORTHEAST QUADRANT OF<br/> COCHRANE ROAD AND HIGHWAY 101 (DA-05-11: Cochrane-DiNapoli-Browman).</b> | 43 |
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## City Council and Redevelopment Agency Action

### CONSENT CALENDAR:

#### ITEM 14

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<b>Consent Calendar: 1 - 10 Minutes</b>	

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|-----|---|----|
| 14. | <u><b>APPROVE JOINT CITY COUNCIL REGULAR AND REDEVELOPMENT AGENCY SPECIAL<br/> MEETING MINUTES OF NOVEMBER 16, 2005</b></u> .....46 | 46 |
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## City Council Action

### PUBLIC HEARINGS:

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- |     |           |  |    |
|-----|-----------|--|----|
| 15. | 5 Minutes | <u><b>DOWNTOWN ADMINISTRATIVE USE PERMIT FEE AND RESIDENTIAL<br/> PRIVATE LIVESTOCK PERMIT FEE</b></u> .....79<br>Public Hearing Opened.<br>Please Limit Your Remarks to 3 Minutes. Public Hearing Closed<br>Council Discussion.<br>Action- <u><b>Adopt</b></u> Resolution Establishing a new Downtown Administrative Use<br>Permit Fee and Residential Private Livestock Permit Fee, Effective<br>February 6, 2006. | 79 |
|-----|-----------|--|----|

## City Council Action

### OTHER BUSINESS:

	Time Estimate		Page
16.	15 Minutes	<p><u><b>DISCUSS DOWNTOWN HOUSING AND MIXED USE DEVELOPMENT PROJECTS IN RELATION TO MEASURE C, AND PROVIDE DIRECTION REGARDING ADVANCING RESIDENTIAL BUILDING ALLOCATIONS FROM 2009-2010 AS NEEDED TO COMPLETE PROJECTS</b></u>.....83</p> <p><b>Recommended Action(s):</b></p> <ol style="list-style-type: none"> <li>1. <b>Determine</b> That it is necessary to Shift 18 Available Allocations Under 2008/09 (3 Micro, 4 Small Project, And 11 Open Market) to either the 2007/08 or 2008/09 Downtown Open Market Competition; and to Advance Additional Allocations From 2009/10 in order to Allow for Completion of Projects that Receive Passing Scores in the Affordable, Small Vertical Mixed Use, and Affordable Competitions; and Direct that the Planning Commission Consider the Following as Available for Allocation from 2009/10: <ol style="list-style-type: none"> <li>a) <b>AFFORDABLE:</b> Advance up to 34 Allocations from 2009/10, to Either 2007/08 or 2008/09 as needed to Complete the Affordable Housing Projects Which Attain a Passing Score.</li> <li>b) <b>SMALL VERTICAL MIXED USE:</b> Advance up to 4 Allocations from 2009/10, to Either 2007/08 or 2008/09 as needed to Complete the Vertical Mixed Use Projects Which Attain a Passing Score.</li> <li>c) <b>DOWNTOWN OPEN MARKET:</b> Advance from 108 to 193 Allocations from 2009/10, to Either 2007/08 or 2008/09 as needed to Complete the Downtown Projects Which Attain a Passing Score.</li> </ol> </li> <li>2. <b>Direct</b> The Planning Commission, if it Advances Allocations, to Make Specific Findings for Each Project Regarding the Infeasibility of Phasing and Necessity to Advance Allocations in Order to Feasibly Complete Projects; and</li> <li>3. <b>Direct</b> The Community and Economic Development Council Subcommittee to Return to the Full City Council by March 1, 2006 with Information and a Recommendation Regarding a Possible Ballot Measure to Modify Measure C Provisions Applicable to Downtown and Vertical Mixed Use Projects, to Allow for These Types of Projects to be Initiated and Completed on an Expedited Basis, and to Allow for "Restoration" of any Advanced Allocations for these Competitions to be Restored as Available for Allocation for 2009/10.</li> </ol>	
17.	15 Minutes	<p><u><b>CITY OF SAN JOSE'S NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE MONTEREY HIGHWAY SOCCER COMPLEX</b></u>.....87</p> <p><b>Recommended Action(s):</b></p> <ol style="list-style-type: none"> <li>1. <b>Provide Direction</b> to Staff: <ol style="list-style-type: none"> <li>a) <b>Forward Comments</b> to the City of San Jose</li> </ol> <p><b>OR</b></p> <ol style="list-style-type: none"> <li>b) <b>Do Not Comment</b> on the Notice of Preparation and <b>Wait</b> for the Opportunity to Comment on the Draft Environmental Impact Report; and</li> </ol> </li> <li>2. <b>Assign</b> a Council Sub-Committee with Responsibility for Monitoring this Project's Progress.</li> </ol>	

**OTHER BUSINESS:**

	<b>Time Estimate</b>		<b>Page</b>
18.	5 Minutes	<b><u>SELECTION OF CITY COUNCIL MAYOR PRO TEMPORE AND REDEVELOPMENT AGENCY VICE-CHAIR</u></b> (Continued from 11/30/05) .....88	
		<b><u>Recommended Action(s):</u></b>	
		1. <b><u>Open Floor</u></b> to nomination(s) for Mayor Pro Tempore/Vice-Chair; and	
		2. <b><u>Select</u></b> Council/Agency Member to serve as Mayor Pro Tempore/Vice-Chair per City Council Policy CP 99-01.	

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

**ADJOURNMENT**



## **CITY COUNCIL STAFF REPORT**

**December 7, 2005**

### **REQUEST FOR BANKING SERVICES**

#### **RECOMMENDED ACTIONS:**

1. Award Contract for Banking Services to Bank of the West.
2. Authorize the City Manager to Execute a Contract with Bank of the West for banking services for three years with an option to renew for three additional years, subject to the City Attorney's review.

#### **EXECUTIVE SUMMARY:**

The City's current agreement for banking services expires December 31, 2005. The City has been banking with South Valley National Bank since 1999. Following a discussion by the Financial Policy Committee, which recommended proceeding with a request for proposals with City Treasurer oversight, a request for proposals was prepared and distributed by staff to all banks within city limits in November 2005. Three banks attended a pre-bid meeting and responded to the request for proposals by the deadline: South Valley National Bank, Bank of the West and Heritage Bank of Commerce.

The request for proposals outlined required banking services, related fees for services, recommended services and information regarding merchant (credit card processing) services. All banks were responsive to this request. Services provided by the three banks are comparable. The City Treasurer and staff reviewed the proposals and recommend, based on the described criteria of evaluating the proposals, including quality and responsiveness, ability to meet service requirements, experience and cost, Bank of the West as the responder who meets the City's banking needs at the lowest cost. A summary of estimated costs is shown below.

	Bank of the West	Heritage Bank of Commerce	South Valley National
Monthly Services	1,190.00	2,222.39	2,786.42
Merchant Services	1,941.89	2,139.49	1,897.87
Total for Comparison	3,131.89	4,361.88	4,684.29

It is important to note that total costs are based on estimated volumes of activity and may not be actual costs incurred. In addition, merchant services have an extensive list of discount and per item charges based on numerous factors. The estimate above uses standard rates for comparison purposes only and actual costs may be more or less.

The City and the selected bank will enter into a three year contract to be effective January 1, 2006.

This relationship is consistent with the City's goals of obtaining the best service value for the lowest possible cost.

#### **FISCAL IMPACT:**

The recommendation of contracting with Bank of the West will result in an average annual savings of approximately \$13,900.00 for the next three years. Fees for services are offset by compensating balance earnings and no budget adjustment is necessary.

**Agenda Item # 1**

**Prepared By:**

**Assistant Finance  
Director**

**Approved By:**

**Finance Director**

**Submitted By:**

**City Manager**





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** December 7, 2005

### **APPROVE FILING GRANT APPLICATION FOR COMMUNITY PARK BASKETBALL COURT AND WATER CONSERVATION MEASURES**

**RECOMMENDED ACTION:** Adopt the attached Resolution approving the filing of an Application for grant funds for the Roberti-Z'Berg-Harris Block Grant Program under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002.

**EXECUTIVE SUMMARY:** The 2003-04 CIP identifies the Community Park Improvements Project with funding identified from two sources- Park Development Funds and Proposition 40 Per Capita Grant Program. This latter source of funds results from the 2002 Resources Bond Act administered by the State of California Department of Parks and Recreation. A second source of grant funding under Proposition 40 is the Roberti-Z'Berg-Harris Block Grant Program. The Community Park Improvements Project identifies an outdoor lighted basketball court. This improvement is eligible for funding under the Roberti-Z'Berg Block Grant Program qualifying as an "after school activity". Within Community Park Council has also approved a turf maintenance reduction program wherein the turf area will be reduced to focus resources for maintenance on high activity areas only. This will be accomplished through the placement of wood chip mulch in the areas of lower activity, thus saving maintenance and water costs. The placement of the wood chip mulch and the upgrading of our irrigation controllers in this park are also eligible improvements under the Roberti-Z'Berg-Harris Block Grant Program. The proposed new irrigation controllers will have the real time capability of adjusting the need for water dependent upon atmospheric conditions and how they are effecting the amount of moisture present in the soil. Water is only applied by the controller to replace needed moisture. Over and under watering are greatly reduced.

Staff recommends proceeding with this Grant application to maximize the use of all available funding for these improvements.

As a first step in the application process, the governing body must authorize by resolution the application for these funds allowing the City to enter into a contact with the State which must be executed prior to June 30, 2006. The CIP indicates construction of the Community Park Improvements beginning in Fiscal Year 2004-05 and completed in December of Fiscal Year 06-07.

Staff recommends that City Council approve the filing of this grant funding application.

**FISCAL/RESOURCE IMPACT:** None at this time.

**Agenda Item # 2**

**Prepared By:**

**Dep Dir Public Works**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE APPLICANT TO APPLY FOR GRANT FUNDS FOR THE ROBERTI-Z'BERG-HARRIS BLOCK GRANT PROGRAM UNDER THE CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002**

**WHEREAS**, the people of the State of California have enacted the CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002 which provides funds for the Roberti-Z' Berg-Harris Block Grant Program for grants to eligible Applicants; and

**WHEREAS**, the California Department of Parks and Recreation has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures; and

**WHEREAS**, said procedures established by the California Department of Parks and Recreation require the Applicant's Governing Body to certify by resolution the approval of the Applicant to apply for the Roberti-Z' Berg-Harris allocation; and

**WHEREAS**, the Applicant will enter into a Contract with the State of California for the Project;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Morgan Hill City Council that it hereby:

1. Approves the filing of an Application for local assistance funds from the Roberti-Z' Berg-Harris Block Grant Program under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002; and
2. Certifies that the Applicant has or will have sufficient funds to operate and maintain the Project(s); and
3. Certifies that the Applicant has reviewed, understands and agrees to the General Provisions contained in the Contract shown in the Procedural Guide; and
4. Certifies that the Project conforms to the recreation element of any applicable city or county general plan; and
5. Appoints J. Edward Tewes, City Manager, as agent to conduct all negotiations, execute and submit all documents including, but not limited to Applications, agreements, payment requests and so on, which may be necessary for the completion of Project(s).

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> day of December, 2005 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

### **CERTIFICATION**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_ adopted by the City Council at the Regular City Council Meeting of December 7, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: DECEMBER 7, 2005**

### **ACCEPTANCE OF TRAFFIC SIGNAL INSTALLATION AT TENNANT/HWY 101 SOUTHBOUND RAMPS PROJECT**

#### **RECOMMENDED ACTION(S):**

1. Accept as complete the Traffic Signal Installation at Tennant/HWY 101 Southbound Ramps project in the final amount of \$501,491.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's Office.

**EXECUTIVE SUMMARY:** The construction contract for the Traffic Signal Installation at Tennant/HWY 101 Southbound Ramps project was awarded to Granite Rock Company – Pavex Construction Division by City Council at their February 16, 2005 meeting in the amount of \$428,309, plus a ten percent contingency of \$42,831, for a total not to exceed amount of \$471,140.

The scope of the work for this project includes installing traffic signal, street lighting, street widening, and pedestrian pathway improvements at the intersection of Tennant Avenue and Highway 101 per the Plans and Specification documents. In addition, this project will interconnect the northbound HWY 101, southbound HWY 101, Juan Hernandez and Butterfield traffic signals.

On May 4, 2005, City Council approved a change order in the amount of \$50,000 to replace approximately 140 linear feet of shallow asbestos cement lined water main with City standard ductile iron pipe. The revised not to exceed budget is now (\$471,140+\$50,000) \$521,140.

There were several other change orders approved for unforeseen conditions, which brings the total contract amount to \$501,491. The work was substantially complete by August 23, 2005 in accordance with the Contract, Plans and Specifications; however, Caltrans did not approve the project until November 16, 2005.

**FISCAL IMPACT:** The total construction cost for this project is \$501,491 and was funded under CIP Project Number 502K03. Funding of \$410,000 is from the Traffic Impact Fund (309), \$180,000 from the un-appropriated Traffic Impact Fund (309), and \$50,000 is from the Water Main Replacement Project (610093), for a total of \$521,140.

**Agenda Item # 3**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

Record at the request of  
And when recorded mail to:

CITY OF MORGAN HILL  
CITY CLERK  
17555 Peak Avenue  
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION  
CITY OF MORGAN HILL

**TRAFFIC SIGNAL INSTALLATION AT TENNANT/HWY 101 SOUTHBOUND RAMPS**

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 21<sup>ST</sup> day of March, 2005, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Granite Rock Company – Pavex Construction Division, on February 16, 2005, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on August 23, 2005, accepted by the City Council on December 7, 2005, and that the name of the surety on the contractor's bond for labor and materials on said project is Continental Casualty Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefore approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, California

Dated: \_\_\_\_\_, 2005.

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Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

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Irma Torrez, City Clerk  
City of Morgan Hill, CA  
Date:



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: December 7, 2005***

### **COURTHOUSE GARDEN CONCEPTUAL DESIGN**

**RECOMMENDED ACTION(S):** Appropriate \$10,600 from unappropriated fund balance in Water System Replacement Fund (653) for this Demonstration Water Conservation Garden Project, CIP #126005.

**EXECUTIVE SUMMARY:** Consistent with the Council's interest in water conservation activities, the City is constructing a network of garden landscapes demonstrating the efficient use of water. The pathway between the newly-constructed Courthouse and the pedestrian railroad crossing is an ideal high-profile location for such a demonstration landscape. It will complement the newly-constructed Civic Center Demonstration Garden and the Wildlife Trail.

Like most public projects, the first step in building the project is to complete a conceptual design. City staff and staff from our landscape architect, Bellinger Foster Steinmetz, have met with the Architectural Review Board (ARB) to discuss the network of gardens and intend to develop multiple concepts for this important area. These concepts will be presented to both the ARB and the Utilities and Environment Subcommittee for further consideration before a final concept is adopted.

**FISCAL/RESOURCE IMPACT:** The City's Adopted Budget includes \$20,000 for the design of the Courthouse Garden in FY 06/07 on page 14 of the CIP. In order to have the garden completed when the Courthouse is opened, it will be necessary to begin the design work this year. Therefore, staff is requesting a new appropriation at this time for this fiscal year. Overseeing the design of the Garden is an anticipated and included activity in the work program of the Public Works Department.

**Agenda Item # 4**

**Prepared By:**

**Program Administrator**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: December 7, 2005***

**TITLE: CONSULTANT AGREEMENT WITH NAFFA  
INTERNATIONAL, INC. FOR OUTSIDE PLAN REVIEW SERVICES**

**RECOMMENDED ACTION(S):**

1. Authorize the City Manager to execute a contract in the amount of \$75,000, subject to review and approval by City Attorney.

**EXECUTIVE SUMMARY:**

The volume of activity in the Building Division, including plan review, is expected to remain high during fiscal year 05/06. Most residential and small commercial/industrial plan reviews are performed internally. However, when the workload is exceedingly high or plan reviews are large and exceed staff's level of expertise, an outside plan check consultant is utilized. In addition, we are expecting two large projects to be submitted for plan review this fiscal year, the new Morgan Hill Public Library and the proposed DiNapoli project (Phase I), which will require plan reviews to be performed by an outside consultant.

The City of Morgan Hill has held a contract with NAFFA International, Inc. (NAFFA) for outside plan review services for the past several years. NAFFA is experienced in all aspects of our plan review process and procedure. The fees charged by this firm are comparable to that of other outside plan review firms. NAFFA has historically provided excellent customer service to the City and permit applicants.

**FISCAL IMPACT:** The services provided under these contracts will be provided on demand and paid for by the customer requesting the service. The cost for this contract has been included in our budget.

**Agenda Item #5**

**Prepared By:**

**Monica Chavez  
Delgado**

**Approved By:**

**Kathy Molloy  
Previsich**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *December 7, 2005*

**Agenda Item # 6**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Chief of Police**

**Submitted By:**

**City Manager**

### **PURCHASE OF THE POLICE COMMUNICATIONS' DISPATCH VOICE LOGGING SYSTEM**

#### **RECOMMENDED ACTION(S):**

File Report on the Emergency Purchase of a Communications' Dispatch Voice Logging system from Capture Technologies for \$10,605.89.

#### **EXECUTIVE SUMMARY:**

Municipal Code section 3.04.160 allows the purchasing officer, in an emergency, to purchase supplies costing more than \$10,000 without formal competitive sealed bids, and requires that a written statement regarding the circumstances and purchase be submitted to the City Council. An emergency is defined in Municipal Code section 3.04.030 O. as "...a situation where immediate action is required to preserve the public peace, health and safety and/or to avoid severe degradation of a city facility." The purchasing officer determined that an emergency occurred, as explained below, and authorized the purchase of a Communications' Dispatch Voice Logging system without the formal bid process that would normally be required.

The current voice logging system was purchased in March 2001. In August 2005 we were notified by Capture Technologies, with whom we have our maintenance contract, that the manufacturer of the Digital Audio Tape (DAT) drives gave official notice to Capture that they had reached their "end of life". The manufacturer will no longer support the equipment after the notification. In addition, the recorder is a DOS based recording system; upgrades to another archiving medium such as DVD are not supported. The system will continue to record calls onto the internal hard drive but should a DAT drive fail, we will be unable to replace it and we will lose our recorded voice information.

In July 2005 we had a DAT drive failure. The DAT drive was replaced with another model and conversions were made to temporarily abate the problem. On August 8, 2005, we had annual maintenance performed on the logger and 2 weeks later experienced another drive failure. At the present time we are only able to record to the hard drive but we cannot retrieve the information. We are unable to provide the District Attorney's Office/Defense Attorneys with any recordings from phone/radio transmissions from our Communications center. These recordings are very important in the prosecution of criminal cases. Our ability to meet the State mandated retention period of 180 days is compromised. Until we receive a replacement system, we will attempt to retrieve information by going to Campbell PD and using their voice logger to retrieve subpoenaed information.

Informal quotes were obtained from vendors to replace the equipment. Staff selected Capture Technologies based on price, equipment availability and past maintenance service. They have given us an on site evaluation of our voice logging needs with our present communication equipment. Because of technology changes and the installation of our new dispatch equipment, we are able to use a much smaller voice logger and derive a better benefit. An additional advantage is that our annual maintenance contract will be reduced from \$4450/year to \$1725/year with the same five percent increase per year.

The funds from the maintenance contract which began May 1, 2005, will be used to help offset the cost of the new logger. Fifty percent (\$2,221) will be applied as a rebate towards the new equipment. \$1,725 will pay in full for the first year of the new maintenance agreement which will begin one year from the date of installation. The manufacturer warrants the equipment for 90 days. Capture will pay for the remainder of the first year. The remaining \$496 was applied to our 3 service calls made during the term of the contract. They have also given us a trade in value of \$75 per channel (12 channels) for a total of \$900 as well as discounted the new hardware to \$10,500. The total installed price is \$10,605.89.

#### **FISCAL IMPACT:**

Funding is in the Police operating budget in 010-42523-8270 (\$4235) and 010-42231-3205 (\$6370.89).



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: DECEMBER 7, 2005**

**TITLE: GENERAL FUND RESERVE POLICY**

### **RECOMMENDED ACTION:**

Direct Financial Policy Committee recommendations concerning General Fund reserve policy to City Council for consideration at the January 2006 retreat.

**Agenda Item # 7**

**Prepared By:**

**Finance Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** The existing General Fund reserve policy reads as follows:

“Purpose:...The City of Morgan Hill commits to target the minimum level necessary to maintain the City’s credit worthiness and to adequately provide for economic uncertainties, local disasters or catastrophes, future debt or capital obligations, cash flow requirements and legal requirements...”

Policy:...General Fund Reserves may be used to support General Fund expenditures as long as:

1. Revenues and expenditures balance by June 30, 2008, and
2. Reserve levels are not depleted below 25% of revenues in any year with the following exception:
  - a. reserves below 25% may be invested in long term cost savings projects or high return economic development projects, and
  - b. reserves shall never be depleted below 10% of revenues which shall be maintained as an ongoing reserve for emergencies.”

On March 2, the City Council adopted the following goal: “By December 2005, the Financial Policy Committee will develop recommendations to be implemented after the Sustainable Budget has been achieved. Such recommendations should address the use of reserves that might exceed the targeted 25% level, and should address the need to replenish reserves that might fall below the targeted 25% level.” The Financial Policy Committee has discussed this matter and recommends that the City Council consider the following recommendations for General Fund reserves:

Whenever reserves are greater than 25% of annual revenue in any single year, and the adopted budget forecasts that reserves would remain so in the subsequent year, the City shall, in order of priority:

- 1) Use reserves for the same types of investments allowed for the investment zone between 10% and 25%, except that such investments should be expected to recapture the investment outlay within four years.
- 2) Use available reserves for one-time purposes such as capital expenditures so that obligations are not incurred which will end up depleting reserves below 25%.
- 3) Fund a reserve for employee benefits so that funds are available should the City face unexpected increases or employee benefit costs or desire to provide housing assistance to employees.
- 4) Spend the excess for the benefit of the community or decrease revenue.

Whenever reserves are less than 25% of annual revenue in any single year and the adopted budget forecasts that reserves would remain so in the subsequent year:

- 5) If the City has a positive operating margin, the entire excess of revenue over expenditures, in any one year, shall be allocated to replenish reserves; or
- 6) If the City has a negative operating margin, expenditures shall be reduced to a level less than revenue in the following years so that the 25% reserve may be restored within five years or less.

**FISCAL IMPACT:** By revising the existing reserve policy, the City Council would be planning for the economic well being of the General Fund and minimizing disruptions in services to the public.





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *December 7, 2005*

### **APPROVAL OF AMENDED REIMBURSEMENT**

### **AGREEMENT WITH PRAVIN PATEL FOR 16995 CONDIT ROAD**

#### **RECOMMENDED ACTION:**

1. Approve an appropriation of \$4,549 from the current year unappropriated Measure C – Capital Improvement Project fund balance for reimbursement of extra work along the southeast frontage of 16995 Condit Road.
2. Authorize the City Manager to execute the Amended Reimbursement Agreement on behalf of the City subject to review and approval by the City Attorney.

**EXECUTIVE SUMMARY:** Pravin Patel is the developer of the Miniature Golf facility at 16825 Condit Road (see attached location map). As part of his project, Mr. Patel agreed to complete public improvements fronting the adjacent property to the north. The City asked him to do this work so that there would be continuous street improvements along the west side of Condit Road between the East Dunne Avenue and Tennant Avenue intersections. On October 6, 2004, the city council approved an appropriation of \$41,313 to reimburse Pravin Patel for this work. The improvements are now complete. However, during the course of construction additional paving work was required to properly conform the existing pavement to the new public improvements. A street light was also added to improve lighting on Condit Road. This extra work was unforeseen until the construction was underway. The cost of this extra work exceeds the original encumbered amount by \$4,549.

The developer is requesting reimbursement from the City for all costs associated with the installation of the public improvements on the adjacent property. The final total cost for doing this work is \$45,862.

Staff recommends that Council approve the developer's amended reimbursement request since the extra work was done in conjunction with the City approved reimbursable work.

**FISCAL IMPACT:** \$4,549 appropriated from the unappropriated 346 (Measure C – Capital Improvement Program) Fund balance. Sufficient funds exist in the City's 346 Fund Balance to provide the requested reimbursement.

**Agenda Item # 8**

**Prepared By:**

**Senior Civil Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: DECEMBER 7, 2005**

**FINAL MAP APPROVAL FOR JASPER PARK PHASE I**  
**(TRACT 9732)**

**RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize City Clerk to sign the final map authorizing abandonment of unused easement
- 4) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:**

Tract 9732 is a 8 lot subdivision located on the south side of East Dunne Avenue Between Butterfield Boulevard and San Benancio Way (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on June 28, 2005.

The Map includes a list of easements that will be abandoned once the Final Map is filed for recordation. These easements have been superseded by relocation and there are no other public facilities within these easements. Therefore, the City is in compliance with the requirements for abandoning these easements as set forth in Division 9, Part 3, Chapter 4, Section 8330, et seq. of the Streets and Highways Code. The methodology for listing the easements to be abandoned on the map complies with sections 66434(g) and 66499.201/2 of the Subdivision Map Act.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

**FISCAL IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 9**

**Prepared By:**

**Senior Civil Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *December 7, 2005*

**Agenda Item #10**

**Prepared By:**

**HR Director**

**Submitted By:**

**City Manager**

### **RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE APPROVING AMENDMENT TO CONTRACT WITH CALPERS**

#### **RECOMMENDED ACTIONS:**

1. **Adopt** Resolution approving amendment to contract with CalPERS.
2. **Waive** in full the reading of the attached ordinance.
3. **Motion to Introduce** ordinance by title only (roll call vote).
4. **Authorize** the Mayor to execute the attached amendment to contract following final approval of the ordinance.

#### **EXECUTIVE SUMMARY:**

On October 5, 2005 City Council approved the Memorandums of Understanding with the Morgan Hill American Federation of State County and Municipal Employees (AFSCME) Local 101 and with the Morgan Hill Community Service Officers Association (CSOA) effective July 1, 2005 and ending June 30, 2008.

Articles 8.02 and 8.10 of those current contracts provides in part that "Effective June 18, 2006 the City will offer the PERS 2.5% @ 55 retirement program for the Unit." CalPERS regulations define all non-public safety employees as "miscellaneous" employees. This contract amendment (Section 21354.4 of the retirement code), when adopted, must apply to all miscellaneous employees. So, in addition to the AFSCME and CSOA membership, this contract amendment will apply for all management and confidential employees. Government Code Section 20474 requires a secret ballot election by affected employees whenever the contract is amended to provide a benefit which changes the employees' rate of contribution. This amendment will increase the employees' contribution rate by one percent (1%), therefore a secret ballot election will be conducted on or about December 14, 2005.

The process for amending the City's contract with PERS to include 2.5% @ 55 is as follows:

- an actuarial report detaining the financial impact of the amendment is obtained from CalPERS
- the City adopts a Resolution of Intention to amend the contract and the actuarial report is made available to the public, at least two weeks prior to adoption of any increase in benefits under the contract
- a secret ballot election is held in which all miscellaneous employees may cast a ballot
- the City adopts an ordinance amending its contract with CalPERS, with the final reading of the ordinance held at least twenty (20) days after the adoption of the Resolution of Intention

#### **FISCAL IMPACT:**

The total employer contribution rate will increase during fiscal year 2006-07 by 2.211%. Employees will pay the 1% employee contribution rate increase and 25% of future employer rate increases.

#### **LIST OF ATTACHMENTS:**

- ATTACHMENT A** Resolution of Intention
- ATTACHMENT B** Ordinance
- ATTACHMENT C** Exhibit Copy of Amendment to Contract
- ATTACHMENT D** Actuarial Report

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING THE RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL OF THE CITY OF MORGAN HILL**

**WHEREAS**, On October 5, 2005 the City Council approved the Memorandums of Understanding with the Morgan Hill American Federation of State County and Municipal Employees (AFSCME) Local 101 and with the Morgan Hill Community Service Officers Association (CSOA) effective July 1, 2005 and ending June 30, 2008; and

**WHEREAS**, Articles 8.02 and 8.10 of those current contracts provides in part that "Effective June 18, 2006 the City will offer the PERS 2.5% @ 55 retirement program for the Unit"; and

**WHEREAS**, the California Public Employees' Retirement System (CalPERS) requires adoption of the Resolution of Intention by the City Council of the City of Morgan Hill, attached hereto as "Exhibit A";

**THEREFORE, BE IT RESOLVED** that the City Council of the City of Morgan Hill does hereby approve the "Resolution of Intention to Approve an Amendment to the Contract Between the Board of Administration of the California Public Employees Retirement System and the City Council of the City of Morgan Hill", hereto attached as "Exhibit A".

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of December, 2005 by the following vote.

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**         **COUNCIL MEMBERS:**  
**ABSTAIN:**    **COUNCIL MEMBERS:**  
**ABSENT:**     **COUNCIL MEMBERS:**

**☞ CERTIFICATION ☞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on December 7, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT A**

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF MORGAN HILL**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 21354.4 (2.5% @ 55 Full and Modified formula) for local miscellaneous members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved

**ORDINANCE NO., NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES**

**WHEREAS**, on October 5, 2005 the City Council approved a Memorandum of Understanding with the Morgan Hill American Federation of State County and Municipal Employees (AFSCME) Local 101 for the period from July 1, 2005 to June 30, 2008; and,

**WHEREAS**, on October 5, 2005 the City Council approved a Memorandum of Understanding with the Morgan Hill Community Service Officers Association (CSOA) for the period from July 1, 2005 to June 30, 2008; and,

**WHEREAS**, Articles 8.02 and 8.10 of those current MOUs provides in pertinent part that "Effective June 18, 2006 the City will offer the PERS 2.5% @ 55 retirement program for the Unit": and,

**WHEREAS**, management and confidential employees are part of the City's Miscellaneous Group as defined by CalPERS regulations; and,

**WHEREAS**, the City Council wishes to take the necessary steps to amend its contract with PERS to implement the 2.5% @ 55 benefit for Miscellaneous Employees; and,

**WHEREAS**, the 2.5% @ 55 benefit for Miscellaneous Employees contract amendment is to become effective June 18, 2006;

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** That an amendment to the contract between the City Council of the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

**SECTION 2.** The Mayor of the City Council of the City of Morgan Hill is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

**SECTION 3.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or the applicability to other situations.

**SECTION 4.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this Ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the Regular meeting of the City Council of the City of Morgan Hill held on the 7<sup>th</sup> Day of December, 2005, and was finally adopted at a Regular meeting of said Council on the 18<sup>th</sup> Day of January, 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

∞ **CERTIFICATE OF THE CITY CLERK** ∞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18<sup>th</sup> Day of January, 2006.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: December 7, 2005**

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

### **ADOPT ORDINANCE NO. 1745, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXTENSION OF THE FINAL MAP SUBMITTAL DATE AND BUILDING PERMIT SUBMITTAL DATE, AND AN 8-MONTH EXTENSION FOR OBTAINING THE BUILDING PERMIT DATE FOR 34 BUILDING ALLOCATIONS GRANTED FOR FISCAL YEAR 2005-06 FOR MP-02-03: TILTON-GLENROCK.**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1745, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On November 16, 2005, the City Council Introduced Ordinance No. 1745, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment required.



## **ORDINANCE NO. 1745, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXTENSION OF THE FINAL MAP SUBMITTAL DATE AND BUILDING PERMIT SUBMITTAL DATE, AND AN 8-MONTH EXTENSION FOR OBTAINING THE BUILDING PERMIT DATE FOR 34 BUILDING ALLOCATIONS GRANTED FOR FISCAL YEAR 2005-2006 FOR MP-02-03: TILTON-GLENROCK.**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 34 building allocations for 2005-06, 20 building allocations for 2006-07, 15 allocations for 2007-08 and 12 allocations for 2008-09.

**SECTION 4.** On May 18, 2005 the City Council adopted Ordinance Number 1725 which set a development schedule for the 81 building allocations awarded to MP 02-03: Tilton-Glenrock; and

**SECTION 5.** References are hereby made to certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. This document signed by the City of Morgan Hill and the property owner set forth in detail a development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 6.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 9.** MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule (know as Exhibit B of approved development agreement) for the “final map submittal,” “building permit submittal,” and “obtaining building permits” dates for fiscal year 2005-06, as attached in Exhibit A, and by this reference incorporated herein.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of November 2005, and was finally adopted at a regular meeting of said Council on the Day of December 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:            COUNCIL MEMBERS:**  
**NOES:           COUNCIL MEMBERS:**  
**ABSTAIN:      COUNCIL MEMBERS:**  
**ABSENT:       COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**⌘ CERTIFICATE OF THE CITY CLERK ⌘**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1745, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of December 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**Ordinance No. 1745, New Series - EXHIBIT A**

**EXHIBIT "B"**  
**DEVELOPMENT SCHEDULE MP-02-03: Tilton-Glenrock**  
**FY 2005-06 34 allocations/FY 2006-07 20 allocations/FY 2007-08 15 allocations/FY 2008-09 12 allocations**



<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>			
Applications Filed:			10-07-04
<b>II. SITE REVIEW APPLICATION</b>			
Application Filed:			06-30-05
<b>III. FINAL MAP SUBMITTAL</b>			
Map, Improvements Agreement and Bonds:			
FY 2005-06 (34 units)	<del>07-30-05</del>	<b>02-28-06</b>	
FY 2006-07 (20 units)		07-30-06	
FY 2007-08 (15 units)		07-30-07	
FY 2008-09 (12 units)		07-30-08	
<b>IV. BUILDING PERMIT SUBMITTAL</b>			
Submit plans to Building Division for plan check:			
FY 2005-06 (34 units)	<del>08-15-05</del>	<b>03-15-06</b>	
FY 2006-07 (20 units)		08-15-06	
FY 2007-08 (15 units)		08-15-07	
FY 2008-09 (12 units)		08-15-08	
<b>V. BUILDING PERMITS</b>			
Obtain Building Permits:			
FY 2005-06 (34 units)	<del>09-30-05</del>	<b>05-30-06</b>	
FY 2006-07 (20 units)		09-30-06	
FY 2007-08 (15 units)		09-30-07	
FY 2008-09 (12 units)		09-30-08	
Commence Construction:			
FY 2005-06 (34 units)			06-30-06
FY 2006-07 (20 units)			06-30-07
FY 2007-08 (15 units)			06-30-08
FY 2008-09 (12 units)			06-30-09

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 41 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



 <p><b>CITY OF MORGAN HILL</b> Prepared by Community Development Department</p>	<p><b>VICINITY MAP</b></p> <p>Capriano Project</p> <p></p> <p><small>R:\PLANNING\Maps\Illustrator maps\Vicinity Maps\Development Agreement Amendments\DAA-04-08 Tilton-Glenrock.pdf</small></p>
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## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: December 7, 2005***

**Agenda Item # 12**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1746, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, -002, -004, -005 & -007) (ZA-04-12: COCHRANE – DINAPOLI/BROWMAN)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1746, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On November 16, 2005, the City Council Introduced Ordinance No. 1746, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment required.

## **ORDINANCE NO. 1746, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, -002, -004, -005 & -007) (ZA-04-12: COCHRANE – DINAPOLI/BROWMAN)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

- SECTION 1.** The subject site is designated a ‘Sub-regional Commercial Site’ on the General Plan Map. The project proposes a sub-regional commercial shopping center, and is therefore, consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An Environmental Impact Report has been prepared for this project as part of the following applications: General Plan Amendment, Zoning Amendment, Subdivision, Development Agreement, Use Permit and Architectural and Site Plan Review. Mitigation measures and a monitoring program will be adopted for those environmental impacts identified in the report.
- SECTION 4.** The project site is currently zoned PUD with a HC, Highway Commercial underlying zone.
- SECTION 5.** Section 18.30.090 of the Morgan Hill Municipal Code establishes minimum development standards for commercial PUDs.
- SECTION 6.** In accordance with Section 18.30.110 of the Morgan Hill Municipal Code, the City Council may grant exceptions to the minimum PUD development standards upon recommendation of the Planning Commission with the following affirmative findings:
- a. Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
  - b. The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and
  - c. The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and
  - d. Approval of the exception will not be outweighed by the adverse effects to the public health, safety and welfare of persons working or residing in the area.

**SECTION 7.** On November 8, 2005, the Planning Commission reviewed and recommended approval of the zoning amendment request, including the exceptions to the minimum PUD development standards. In their recommendation of approval, based on evidence and the facts in the record, the Planning Commission made the following affirmative findings:

- a. Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
- b. The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and
- c. The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and
- d. Approval of the exception will not be outweighed by the adverse effects to the public health, safety and welfare of persons working or residing in the area.

**SECTION 8.** The project site is one of only two locations in the City designated 'Sub-regional Commercial Site' on the General Plan Map and zoned PUD (Highway Commercial).

**SECTION 9.** Strict adherence to the city-wide PUD standards would hinder the establishment of an economically and functionally successful sub-regional commercial shopping center at the proposed site, as the city-wide PUD standards did not anticipate a large scale, sub-regional commercial shopping center.

**SECTION 10.** Therefore, based upon the above reasons, and the evidence and facts in the record in this matter, the City Council hereby approves exceptions to the City-wide PUD development standards for the proposed sub-regional commercial shopping center. The Council hereby finds that:

- a. Approval of the exceptions is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
- b. The exceptions will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and
- c. The effect of the reduction or elimination of the development standards will be substantially mitigated by the provision of other design features or enhancements to the project; and
- d. Approval of the exceptions will not be outweighed by the adverse effects to the public health, safety and welfare of persons working or residing in the area.

**SECTION 11.** Based on the foregoing, the City Council hereby approves a precise development plan as contained in that certain series of documents dated August 22, 2005 (date stamped October 21, 2005), on file in the Community Development Department, entitled "A Retail Project – A DiNapoli Browman Guglielmo Development" prepared by Craig+Grant Architects. These

documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, basic design, uses, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

**SECTION 12.** The approved project shall be subject to the following conditions:

- a. The applicant shall comply with the mitigation measures of the certified Environmental Impact Report and adhere to the adopted Mitigation Monitoring and Reporting Program.
- b. The project shall be subject to compliance with the Cochrane Road PUD Guidelines as attached in Exhibit A of this Resolution. The project shall also be subject to compliance with the city-wide PUD standards as contained in Chapter 18.30 of the Morgan Hill Municipal Code, excluding any exceptions approved by the City Council.
- c. The signs identified on the project plans are not approved as part of the zoning amendment application, except that two freeway signs and one monument sign at the corner of Mission View and Cochrane Road are approved as described under Item 46 in the attached Cochrane Road PUD Guidelines. A uniform sign program shall be established for the overall PUD and submitted for review and approval by the Architectural Review Board (ARB).
- d. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted.

**SECTION 13.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 14.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.



The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of November 2005, and was finally adopted at a regular meeting of said Council on the Day of December 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1746, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of December 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **EXHIBIT A**

### **A Retail Project Cochrane Road and Highway 101 A Dinapoli Browman Guglielmo Development**

**PUD Guidelines  
Morgan Hill, CA  
November 10, 2005**

#### **Location**

This retail development is located at the northeast quadrant of the Cochrane Road overpass at Highway 101. The Assessor's Parcel Numbers (APN) for the land area within the project are: 728-37-001, 728-37-002, 728-37-004, 728-37-005, 728-37-007.

#### **Introduction and Intent**

The intent of this narrative is to describe the architectural theme and site development plans which will guide the future development of this site relative to architectural compatibility, site design, landscape features, and signage concepts. These development standards are designed to be flexible whenever possible to allow creative freedom and diversity, which is necessary for national tenants to be attracted to this regional shopping center and the development of the best possible project. This document outlines the guidelines under which all business can coexist in a competitive market.

#### **Development Guideline Format**

These PUD guidelines are organized as follows:

- |            |  |
|------------|--|
| Section 1: | Allowable Uses                                 |
| Section 2: | Site Development Concept                       |
| Section 3: | Landscape and Lighting Concepts and Guidelines |
| Section 4: | Parking and Loading/Circulation                |
| Section 5: | Architectural Concepts and Guidelines          |
| Section 6: | Sign Design Guidelines                         |
| Section 7: | Utilities and Appurtenant Uses / Devices       |

## **Section 1: Allowable Uses**

### **Permitted:**

- Mix of commercial and/or retail big box anchors
- Medium size anchors
- Shop space
- Eating Establishments (See Note 1 below)
- Up to five (5) drive-thru facilities as identified on the precise development plan, of which only two can be fast food drive-thru uses, as defined in Note 2 below; any additional drive-thru use proposed within the shopping center shall require a conditional use permit
- Commercial recreation and entertainment uses (including cinema and health club)
- Grocery store
- Offices
- Service Offices (including real estate offices, banks or other financial institutions, title companies, credit unions)
- Personal Services
- Liquor store
- Wine shop
- Any other use listed as a permitted use in the CG, General Commercial District in the Morgan Hill Municipal Code, with the exception of day care centers and nursery schools which shall be conditional uses

Note 1: Eating establishments shall include both sit down and fast food restaurants.

Note 2: For the purpose of this PUD only, 'drive-thru fast food' shall be defined as follows:

A "Drive-Thru Fast Food" restaurant is any establishment whose principal business is the sale of prepared foods to customers and whose service includes all of the following characteristics:

- A. The restaurant has a drive-through aisle and window.
- B. Meals are usually provided in disposable plastic or paper containers.
- C. There is no substantial differentiation in the meals or the service provided for consumption on the premises and meals that are taken out of the premises for consumption.

Businesses that primarily sell coffee, juices and other beverages shall not be considered 'drive-thru fast food' for the purpose of this definition.

### **Conditional:**

- Any drive-thru use that is proposed beyond the five (5) that are permitted in the shopping center shall require a conditional use permit
- A maximum of one fuel station, car wash and convenience market
- All other uses which are supportive of retail (i.e., daycare)

## **Section 2: Site Development Concept**

1. The site development plan consists of three retail areas, created by the pattern of vehicular roadways which bisect the site N/S from Cochrane Road at De Paul Drive and E/W from Mission View Drive.
2. Building setbacks along Cochrane Road shall be an average of 30-ft; however, encroachments into the setback area are permissible to accommodate the architectural and functional needs of the development as long as the overall average is maintained and a substantial portion of the setback shall be no less than 30 feet.
3. Buildings situated at or near the front setback shall provide a public access route to the buildings from the front setback, except as shown on the Site Plan.
4. Elevations submitted with the PUD application (8/22/05) shall not require further review or approval except that the supporting architectural and design details for such elevations shall require final review and approval by an ARB Subcommittee. Any minor modifications to the submittals under the Precise Development Plan shall be subject to approval by Staff on the basis of substantial conformance with the Precise Development Plan, or if Staff is unable to make such a determination, then by a sub-committee of the Architectural Review Board. Subsequent submittals for elevations not submitted as a part of the original PUD application shall be substantially consistent with the Precise Development Plan and shall be subject to the approval of the Architectural Review Board. Individual buildings within the development may be larger or smaller than shown on the Precise Development Plan as long as the approximate location and overall total square footage is substantially consistent with and in aggregate, does not exceed the Precise Development Plan.

## **Section 3: Landscape and Lighting Concepts and Guidelines**

### ***Landscape***

5. Project landscaping shall be substantially consistent with the Project Landscape Plan submitted as a part of the Precise Development Plan. All street trees, trees planted within the front setback areas, and trees planted at the entrance of buildings shall, at a minimum, conform to “15 gallon” sizing standards provided by the California Association of Nurserymen. Except as permitted under guideline #7 below, and except for landscaping adjacent to buildings, all landscape areas shall comply with city code.
6. The general characteristics of the plant palette for the PUD shall be a combination of year-round color and textural interest. Plants shall be selected on the basis of color combinations (consistent with the Art Deco theme), growth patterns, low maintenance and water conservation characteristics. At time of installation, all trees shall, at a minimum, conform to “15 gallon” sizing standards provided by the California Association of Nurserymen.

7. An average 30-foot wide landscape strip (excluding any landscaping within the right-of-way) shall be provided along Cochrane Road. An average 20-ft wide landscape strip shall be provided along Mission View Drive up to the first driveway. Thereafter, an average 15-foot wide landscape strip shall be provided along the northerly extension of Mission View Drive. Encroachments into such landscape strips shall be permissible to accommodate the architectural and functional needs of the development as long as the overall average is maintained and a substantial portion of each landscape strip equals or exceeds the respective 30-foot and 15-foot requirements. Acceptable mitigation for such encroachments shall include, without limitation, additional landscape planting or a combination of an earthen berm or screen wall. Berms shall be an average height of three feet with a minimum height of one and one-half feet, and shall undulate where possible and aesthetically pleasing. Except as provided herein, the design of the landscaping strips referred to above shall substantially conform to the Landscape Plan submitted as a part of the Precise Development Plan.
8. The driveway comprising the main vehicular entry from Cochrane Rd. shall be provided with landscaped medians in substantial conformance with the precise development plan dated 8/22/05 on file at the Community Development Department.
9. Canopy-providing trees shall be planted in the parking lot planter islands to produce shade.
10. The main project entrance at Cochrane Rd. and DePaul Drive shall be well landscaped and serve as a focal point.
11. Shrubs or vine planting shall be provided to screen utilities and trash enclosures.
12. The main parking field shall be screened from view of public streets by use of berming and/or bushes of a minimum of three feet effective height (18 months after planting), as measured from the top of the nearest street curb.
13. Where possible, landscaping shall be used to soften the appearance of fences and walls and front elevations of large scale retail buildings which lack fenestration or other architectural detailing.
14. All service areas fronting on public streets shall be screened by landscaping, berms, screens and/or walls, substantially consistent with the colors and materials shown in the 'colors and materials pallet' packet, date stamped August 24, 2005 on file at the Community Development Department.
15. Special paving or materials such as integral color concrete or asphalt, pavers and/or scored concrete paving shall be provided at key on-site intersections. Pedestrian walkways shall be provided connecting groupings of retail structures to other such retail areas and to parking areas. Walkways which cross traffic lanes shall have special markings such as integral color concrete, scored or raised concrete, colored paving, special striping and/or paving stones.

### ***Lighting***

16. Any decorative lighting on the pedestrian pathways parallel to the main driveway from Cochrane Road shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
17. The design of the exterior building lighting shall be compatible with the Art Deco architectural style of the PUD.
18. The main parking lot lighting fixtures shall be consistent throughout the PUD. The maximum pole height (including the base) shall be 33 feet except that lighting poles along the Mission View project edge and the Cochrane Road project edge across the approved congregate care and assisted living facilities to the south shall be limited to a maximum height (including the base) of 15 feet. Further conditions regarding residentially zoned properties are imposed under guideline #19 below.
19. All lighting shall be shielded and directed in such a manner so as not to directly cast light on neighboring residentially zoned properties or the approved congregate care and assisted living facilities to the south. The Applicant shall pay special attention to insure that there is no unacceptable spillage of light outside the applicable boundaries of the shopping center. Prior to issuance of site construction permits, Applicant shall provide a photometric plan evidencing the conformance of the lighting plan to these guidelines. Adjustments to the lighting intensity and direction may be required after commencement of the use to the extent that neighboring residential properties are adversely affected.

### **Section 4: Parking and Loading/Circulation**

20. The main parking field shall be screened from public view on Cochrane Rd primarily through the use of berming and/or hedge row plantings, shrubs, trees or any combination thereof, in a manner substantially consistent with the project Landscape Plan. At the time of installation, shrub plantings shall conform to “5 gallon” sizing standards provided by the California Association of Nurserymen, trees shall conform to “15 gallon” sizing standards provided by the California Association of Nurserymen, accents and groundcover shall conform to “1 gallon” sizing standards provided by the California Association of Nurserymen and berming may undulate to create interest and contrast as long as (i) the average height shall be three feet, and (ii) not less than 50% of the length of such berming is actually 3 feet or more in height as measured from the top of the nearest street curb.
21. 90 degree parking shall be permitted. Alternatively, the PUD shall permit angled parking and one-way drive aisles subject to review and approval of the Architectural Review Board.
22. Parking areas shall be designed to include provision for pedestrian walkways for access to building entrances. Walkways which cross traffic lanes shall have special markings such as integral color concrete, scored or raised concrete, colored paving, special striping and/or

paving stones. Walkway strips shall be intermittently provided through landscaped areas to protect landscaping from foot traffic damage.

23. In order to facilitate on-site traffic flow and vehicle and pedestrian safety, parking stalls shall not be located directly adjacent to the front of a major use occupying a ground floor area that is 100,000 square feet or larger (i.e. Major 1 (Target) and Major 8 as shown on the precise development plan).
24. Reciprocal access and shared parking between properties shall be used, whenever possible.
25. Cross access easements shall be provided throughout the PUD.
26. Shared access easements and driveways shall be provided.
27. Drive aisles shall allow for circulation within the PUD, with sufficient width for emergency vehicles. Dead end drive aisles are discouraged but shall be allowed subject to review and approval of the Architectural Review Board.
28. Provisions for connecting driveways and walkways between adjacent properties within the PUD are to be provided.
29. Emergency vehicle access shall be provided throughout the PUD.
30. Loading areas and docks shall be screened from view along the new road (proposed northerly extension of Mission View Drive) by landscaping or a screening structure. Screen walls or other screening structures shall be architecturally treated, and may be constructed with metal, concrete, concrete block, wood or a combination thereof (see attached exhibit for an example of acceptable screening). Alternatively, screening along the northern property line may be comprised of dense evergreen plantings.
31. All truck deliveries between the hours of 10pm to 6am shall enter and exit through the DePaul Drive project driveway (main vehicular entry from Cochrane Road).
32. Overnight parking of delivery trucks shall be prohibited on-site, except that delivery trucks may be parked within loading docks provided no equipment is kept running, including but not limited to generators, refrigeration units and compressors.

## **Section 5: Architectural Concepts and Guidelines**

33. The architectural concept shall create a campus of retail structures which vary in character, massing, materials, and colors but remaining consistent with the Art Deco theme of the Precise Development Plan. Each structure shall be complementary to the Art Deco theme but may maintain its own uniqueness. Building facades may contain design features and variances in scale to create interest and character. The design of entertainment uses may be enhanced by featured elements which may include some or all of the following: neon tower, marquee, theater lights and statement lobby glazing. Art Deco forms and treatments

shall be utilized as part of the overall architectural presentation. If neon is utilized, it shall not be established in areas facing residentially zoned properties adjacent to the site. The development shall include tower and/or entry features, bold cornices, and varying facades, and a variety of materials, colors and storefronts. Awnings, light sconces, site lighting, and/or street furniture shall be situated at appropriate locations as determined by Applicant to enhance the pedestrian and/or human scale feel of the project.

34. No building shall exceed 40 feet in height to the top of the parapet except that tower and accent features of buildings may exceed such height limitation as long as (i) the scale and design of such features are consistent and appropriate for the Art Deco design of the shopping center; (ii) such exception affects no more than 25% of the theater and no more than 15% of any other building; and (iii) such features shall not exceed 60 feet at the highest point. Overall, building heights and tower and accent features shall be substantially consistent in scale and proportion with the building elevations dated 8/22/05 on file at the Community Development Department.
35. Rooflines shall vary in height and flat rooflines shall be permitted in a manner substantially consistent with the building elevations dated 8/22/05 on file at the Community Development Department and the Art Deco architectural theme established for the development.
36. Large, continuous structures shall incorporate breaks in horizontal planes by varying architectural features and designs and recessing windows and entrances, to provide substance and scale.
37. Windows shall be enhanced by use of various sizes and shapes, and highlighted by the use of accent trim (e.g. molding, pop-out or wood trim). The design shall be complementary to the architectural style of the PUD.
38. Architectural treatment shall be applied to the front façade of all building elevations consistent with the building elevations dated 8/22/05 on file at the Community Development Department; complementary architectural treatment shall also be applied to other areas of any building clearly visible from any public street.
39. Building design shall be compatible with the immediate adjacent building and provide harmonious transition between various uses.
40. Gutters and downspouts shall be made of quality materials and treated to blend into the facade to which it is attached, unless used as a design element, in which case the color shall be consistent with the color schemes of the building.
41. No mechanical equipment shall be exposed on the wall surface of any building.
42. Mechanical and utility equipment shall be located below the roof line or parapet wall and out of public view. All roof-mounted mechanical equipment or ductwork which project vertically above the roof or parapet shall be screened by an enclosure which is detailed consistently with the building design.



43. Any outdoor storage of goods, materials or equipment (e.g. garden center, lumber yard) shall be located within an enclosed area. The fencing and/or screening enclosing such area shall be consistent with the Art Deco architectural theme of the Precise Development Plan and designed in a manner complementary to the building design and site layout. Chain link fencing with wood inserts is not an acceptable manner of screening.
44. Fences and walls shall be designed to be compatible with the surrounding landscape and architectural style of the PUD.
45. Trash enclosures shall be constructed of solid material, and shall be a minimum of six feet in height, with solid view obstructing gates. Trash enclosures shall be located in inconspicuous locations.

#### **Section 6: Sign Design Guidelines**

46. This PUD shall permit one pylon sign structure along Highway 101 near the north end of the site and one pylon sign structure along Highway 101 near Cochrane Road consistent with the original PUD application (8/22/05), subject to approval by the SCVWD if necessary. The pylon sign near the north end of the site shall be a maximum height of 68 ft, as measured to the top of the horizontal cornice. The pylon sign near Cochrane Road shall be a maximum height of 50 ft, as measured to the top of the horizontal cornice. Decorative architectural features may extend above the 68-ft and 50-ft height limits as depicted on the sign elevations date stamped October 27, 2005, on file at the Community Development Department. This PUD shall also permit one monument sign structure consistent with the original PUD application (8/22/05) at the intersection of Cochrane Road and Mission View Drive. This monument sign shall be a maximum overall height of 20 feet, and shall not be illuminated in the evenings after 10 pm.
47. The uniform sign program for the Project shall control the signage requirements and placement of signs within the project. The uniform sign program shall be applicable to all buildings and uses within the PUD. Tenant identification signs will be allowed on the sides of buildings that are visible to Highway 101. Signs fronting Highway 101 and Mission View Drive shall be limited to business identification signs only. Signs, banners and posters shall be permitted and must be of a high quality with character, and ambiance consistent with the Art Deco theme and the standards of the Precise Development Plan. Address numbers shall contrast with their background and shall be a minimum of six inches in height.
48. Poster boards containing retail displays (including advertising) incorporating an artistic component or displaying information of community interest shall be permitted. Such displays shall comply with guidelines issued by a sub-committee of the Architectural Review Board.

## **Section 7: Utilities and Appurtenant Uses / Devices**

49. Easements for the installation and maintenance of utilities, walkways, roads, shared driveways, parking and drainage facilities shall be recorded as part of any subdivision map or lot line adjustment.
50. A detention pond or an interlinked detention pond system with outfalls shall be used to serve the PUD. The detention ponds and/or bioswales may be located within any setback area or outside a setback area.
51. Utility equipment may be located within landscaped or setback areas provided they are located as far from the street frontage as feasibly possible, and adequately screened and/or landscaped to limit the visibility of such equipment.
52. Uses within the PUD that utilize shopping carts shall provide indoor or outdoor screened storage of the carts and shall provide for architecturally treated collection areas throughout the parking lots.
53. Vending machines, rides, newspaper racks, coin operated devices or other similar devices may be placed on the exterior of and/or walkway adjacent to proposed buildings, provided the area in which the devices are located is partially enclosed or architecturally treated. Prior to installing such equipment or devices, Applicant shall provide Staff with a proposed plan indicating the nature and proposed location of such devices for Staff review and approval. Once installed, such devices and locations shall be maintained in a high quality manner.

## **Section 8: Disclosures**

54. A disclosure statement shall be included in all sale or lease agreements informing prospective buyers and tenants of the adjacent agricultural uses.

(end)



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: December 7, 2005**

**Agenda Item # 13**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1747, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND MORGAN HILL RETAIL VENTURE, LIMITED PARTNERSHIP, FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 66.5 ACRES LOCATED IN THE CITY OF MORGAN HILL AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (DA-05-11: Cochrane-DiNapoli-Browman)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1747, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On November 16, 2005, the City Council Introduced Ordinance No. 1747, New Series, with the following changes to the related Development Agreement:

- 1) Revise Page 4 of the Development Agreement, deleting the word "public" in Section 1.6 before "...improvements required by the Conditions of Approval...."
- 2) Revised Page 4 of Exhibit F, Section E(v) to replace the phrase, "This Section 3.F..." with the phrase, "This Section 3.E...."
- 3) Added Section 4 to Exhibit F, to clarify when building permits would be pulled.
- 4) Added Section 5 to Exhibit G, to clarify when building permits would be pulled.

Ordinance No. 1747 was Introduced by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment required.

## **ORDINANCE NO. 1747, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND MORGAN HILL RETAIL VENTURE, LIMITED PARTNERSHIP, FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 66.5 ACRES LOCATED IN THE CITY OF MORGAN HILL AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (DA-05-11: Cochrane-DiNapoli-Browman)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** California Government Code §65864 through §65869.5 authorizes cities and counties to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 2.** The City of Morgan Hill (“City”) Municipal Code, Chapter 18.80 provides for procedures and requirements for Development Agreements.

**SECTION 3.** Morgan Hill Retail Venture, L.P. (“Developer”) made application (DA-05-11) to the City to enter into a Development Agreement provided for in the Government Code and the City’s Municipal Code in conjunction with its other applications for developing the 66.5 acres located at the northeast quadrant of Cochrane Road and Highway 101 (the “Property”).

**SECTION 4.** After public notice, the Planning Commission and City Council held hearings on the proposed Development Agreement between the City and the Developer.

**SECTION 5.** The City Council certified the Environmental Impact Report regarding all the approvals for the Developer’s proposed project on the Property, including, but not limited to, the Development Agreement.

**SECTION 6.** The City Council hereby finds that the Development Agreement approved by this Ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 7.** Effective Date Publication. This Ordinance shall take effect from and after thirty (30) days from the date of its adoption. The City Clerk is hereby directed to publish this Ordinance pursuant to §36933 of the California Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of November 2005, and was finally adopted at a regular meeting of said Council on the Day of December 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1747, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of December 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – NOVEMBER 16, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 7:03 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Grzan, Sellers, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Member Carr

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS**

Council/Agency Member Carr entered and was seated.

Mayor Kennedy presented a proclamation to David Wilson, proclaiming the week of November 20-26, 2005 as *National Family Week*.

**CITY COUNCIL REPORT**

Mayor Kennedy indicated that he would be forgoing his presentation this evening due to the expected length of tonight's meeting.

Council Member Carr stated that the Public Safety & Community Services Committee met earlier this evening. He reported the Committee discussed issues and restrictions associated with dangerous dogs. He indicated that there were members from the public in attendance who addressed this issue, and that the Committee requested the Chief of Police return to the Committee with additional information to see if there will be a recommendation to be brought forth to the City Council at a later date.

**CITY MANAGER REPORT**

City Manager Tewes indicated that he did not have a report to present this evening.

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## **CITY ATTORNEY REPORT**

Interim City Attorney Siegel stated that he did not have a City Attorney's report to present this evening.

## **OTHER REPORTS**

## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Dick Oliver stated that he represents Dividend Homes and that they have been an active participant in the housing building program in Morgan Hill for almost 30-years. He informed the Council that Dividend Homes recently moved their office to Morgan Hill and that they have a number of employees who have worked in Morgan Hill for over 10-years. These employees have approached him and informed him that they would like to reside in Morgan Hill and inquired whether the Council would consider a request to modify the BMR program to allow 1-2 units being built be reserved for employees who otherwise meet all the qualifications of the BMR program. He requested that the Council allow staff to work with him in order to return with a proposed program for consideration.

No further comments were offered.

## ***City Council Action***

## **CONSENT CALENDAR:**

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-8, as follows:*

1.        **OCTOBER 2005 FINANCE AND INVESTMENT REPORT – CITY OF MORGAN HILL**  
**Action:** **Accepted** and **Filed** Report.
2.        **INDOOR RECREATION CENTER (IRC) PROJECT – OCTOBER CONSTRUCTION PROGRESS REPORT**  
**Action:** **Information** Only.
3.        **AWARD OF THE BUTTERFIELD WELL PUMP STATION PROJECT**  
**Action:** 1) **Awarded** Contract to Conco West, Inc. for the Construction of the Butterfield Well Pump Station Project in the Amount of \$525,000; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$52,500.
4.        **APPROVAL OF FUNDING AGREEMENT AND PROFESSIONAL SERVICES AGREEMENT TO PREPARE A SEWER ASSESSMENT DISTRICT FEASIBILITY STUDY FOR THE COUNTY PORTION OF HOLIDAY LAKE ESTATES**

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**Action:** 1) Approved Funding Agreement and Authorized the City Manager, Subject to Review and Approval as to Form by the City Attorney, to Execute the Agreement on Behalf of the City of Morgan Hill ; and 2) Approved the Scope of Work for Harris & Associates in the Amount of \$38,000; and Authorized the City Manager to Execute a Professional Services Agreement for the Holiday Lake Estates Sanitary Sewer Assessment District Feasibility Study, Subject to Approval as to Form by the City Attorney and Subject to all Parties Executing the Cost Sharing Agreement.

5. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2005 QUARTERLY REPORT #3**

**Action:** Accepted and Filed the RDCS Third Quarter Report for 2005.

6. **MORGAN HILL LIBRARY-APPROVAL OF \$29,000 FOR ADDITIONAL DESIGN SERVICES FOR EXTERIOR AND INTERIOR SIGNAGE**

**Action:** Authorized Amendment of Contract Agreement with Noll & Tam to Provide Additional Services for Exterior and Interior Signage Design and Coordination for the Library.

7. **AMEND CONTRACT WITH KIDZ LOVE SOCCER**

**Action:** Authorized the City Manager to Amend Contract with Kidz Love Soccer to Increase Compensation to \$26,000; Subject to Review and Approval by City Attorney.

8. **JOINT SPECIAL CITY COUNCIL; ARCHITECTURAL REVIEW BOARD; BICYCLE & TRAILS ADVISORY COMMITTEE; LIBRARY, CULTURE & ARTS COMMISSION; MOBILE HOME RENT COMMISSION; CORPORATION YARD COMMISSION; PARKS & RECREATION COMMISSION; PLANNING COMMISSION; SENIOR ADVISORY COMMITTEE; AND YOUTH ADVISORY COMMITTEE WORKSHOP MINUTES OF NOVEMBER 9, 2005**

**Action:** Approved the Minutes as Submitted.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** On a motion by Vice-chair Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) Approved Consent Calendar Items 9 and 10, as follows:

9. **OCTOBER 2005 FINANCE AND INVESTMENT REPORT – REDEVELOPMENT AGENCY**

**Action:** Accepted and Filed Report.

10. **HOUSING REHABILITATION LOAN FOR 50 WEST FIFTH STREET**

**Action:** 1) Approved a Loan of up to \$60,000 under the Agency's Housing Rehabilitation Loan Program to Rehabilitate the Home at 50 West Fifth Street; and 2) Authorized the Executive Director to do Everything Necessary to Prepare and Execute Loan Documents.



## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore/Vice-chair Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 11 and 12, as follows:*

11. **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF OCTOBER 26, 2005**

**Action:** **Approved** the Minutes as submitted.

12. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 2, 2005**

**Action:** **Approved** the Minutes as submitted.

## ***City Council Action (Continued)***

### **CONSENT CALENDAR:**

Council Member Carr requested that Agenda Item 13 be removed from the Consent Calendar as he would be recusing from voting on this item as he resides within 500 feet of the project area.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Item 13 as follows:*

13. **AWARD OF 2005-2006 SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT PROJECT**

**Action:** 1) **Awarded** Contract to J.J.R. Construction, Inc. for the Construction of the 2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project in the Amount of \$54,975; Subject to Review and Approval by the City Attorney; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$5,500.

## ***City Council Action***

### **PUBLIC HEARINGS:**

14. **DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-08: TILTON-GLENROCK – Ordinance No. 1745, New Series**

Director of Community Development Molloy Previsich presented the staff report on a request to amend an approved development agreement for phases 7-10, totaling 83-lots, of the Capriano development located on the south side of Tilton Avenue, between Hale Avenue and the railroad tracks. She informed the Council that the applicant requested extensions for each of the three remaining years that homes would be built. On October 25, 2005, the Planning Commission considered the request and took an action to recommend Council approval of the extensions on the final maps and building permit submittals to obtain building permits for the fiscal year 2005-06 development phase (34-lots). She indicated that the Planning Commission felt it would be premature to amend time frames for years past fiscal year 2005-06.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1745, New Series.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1745, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXTENSION OF THE FINAL MAP SUBMITTAL DATE AND BUILDING PERMIT SUBMITTAL DATE, AND AN 8-MONTH EXTENSION FOR OBTAINING THE BUILDING PERMIT DATE FOR 34-BUILDING ALLOCATIONS GRANTED FOR FISCAL YEAR 2005-2006 FOR MP-02-03: Tilton-Glenrock, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**15.    GENERAL PLAN AMENDMENT, GPA-04-12: COCHRANE-CITY OF MORGAN HILL; ZONING AMENDMENT, ZA-04-12; SUBDIVISION, SD-05-05; DEVELOPMENT AGREEMENT, DA-05-11; USE PERMIT, UP-05-11; and SITE REVIEW, SR-05-12: COCHRANE-DINAPOLI-BROWMAN – Resolution Nos. 5957, 5958, 5959, 5960, & 5961, and Ordinance Nos. 1746 and 1747, New Series**

Mayor Kennedy identified the process to be undertaken this evening with respect to agenda item 15. He indicated that many council members have met with developers and other representatives from the shopping centers and that the time to disclose these contacts would be made as part of the public hearing; before receiving public comments.

Senior Planner Tolentino informed the Council that this evening, staff would be recommending a project that would be implementing a major goal of the Morgan Hill General Plan: to develop a sub regional commercial center in the City at the northeast quadrant of Cochrane Road and Highway 101. She said that construction of this type/size of shopping center requires a number of entitlements and environmental review. She informed the Council that it would be hearing from a number of individuals

who would present the project followed by the description of entitlements and the environmental review process.

Galen Grant, Craig and Grant Architects, project architect, informed the Council that 3-4 neighborhood meetings were held and that the architectural firm tried to address neighborhood concerns. He identified the key issues addressed with the overall master site plan (e.g., location of anchor buildings such as Target; main pedestrian/vehicular entryway located at the center of the site, developing a strong sense of boulevard that is beautifully landscaped and heavily articulated with the back sides of the building; pedestrian access; intersection/spines; parking lot; gateway entry features; hardscape treatment; outdoor plaza/courtyard areas; etc.). He stated that the project is both vehicular and pedestrian friendly. He indicated that as they started to develop the architectural theme, they wanted to make sure that they selected a design concept that everyone would embrace. He indicated that they held meetings with staff, neighborhood residents, and a Planning Commission subcommittee where they presented a number of different architectural themes. He stated that the one theme that everyone seemed to be comfortable with was the art deco theme for the shops as they created a sense of balance and animation. He said that the design included a lot of vertical and horizontal articulations. He stated that the design creates a theme that repeats itself consistently throughout the center in key areas (tower features, radial forms). As they developed the building elevations, they incorporated the use of columns, playful forms, colors, and roof elements. He indicated that the City requested an animated roof architecture so that the design is not just a series of tall flat or pitched roofs. He stated that, traditionally, big box users are difficult to get to embrace an architectural style because of corporate themes they would like to continue from site to site. He indicated that the architectural theme was applied to Target in what they believe was a success; using the same colors, articulating their logo, creating vertical elements, and being consistent with the overall center. It was the architectural firm's goal to develop a concept that the City would be pleased with, the developer would be excited about, and that the Council would be equally approving of the design.

Ms. Tolentino addressed the entitlements being requested and the environmental review process. She informed the Council that a few changes were made to the agenda packet, and that each Council member received a packet of recommended changes. She indicated that the changes replace typographical errors and provide clarification of some items contained in the Council's staff report. The changes address the development agreement and one amendment pertains to the vesting tentative map. She indicated that the changes would be described by staff as they review each application. She addressed the following:

- General Plan Amendment. The current general plan map depicts a future collector road extending north of Cochrane Road from DePaul Drive. With the future collector road, as currently situated, it would bisect the project site and make it difficult to create a cohesive commercial development for the area. Staff recommends the segment of roadway, north of Cochrane Road, be shifted from DePaul Drive to Mission View in order to allow for a cohesive development of the site. The Planning Commission reviewed the request and unanimously recommends Council approval of the general plan amendment.
- Zoning Amendment. The current zoning for the site is planned unit development (PUD), highway commercial. The purpose of the zoning amendment is two-fold: 1) to establish a precise development as presented by the project architect; and 2) to adopt PUD guidelines.

There are two components to the PUD guidelines: 1) the establishment of the permitted and conditional uses. The uses would include mixed commercial/retail uses, restaurants, multiplex cinema, and a grocery store. 2) Development standards. She informed the Council that the applicant is requesting exceptions for a number of PUD standards. She stated that when the city-wide PUD standards were first drafted, they did not anticipate a shopping center of this size or magnitude. Therefore, the Council will find that a lot of the development standards are not conducive for the development of a sub regional shopping center. Thus, one of the reasons for the exceptions to the PUD standards. The second reason is to allow flexibility in the development of the site. She said that there has been a great amount of time and effort spent in the review of the PUD guidelines as well as the exceptions proposed to the PUD guidelines by staff, the architectural review board and planning commission. As a result of this review, a number of changes were made from the applicant's originally proposed language. However, with the changes, both staff and the planning commission can recommend approval of the exceptions, given the nature of the sub regional shopping center. She informed the Council that the applicant is also in agreement with the changes that were made to the PUD guidelines attached to the resolution being recommended for approval this evening.

It was stated that although the PUD guidelines allow flexibility, the development of the site would still need to be in substantial conformance with the precise development plan being recommended for approval this evening.

- Vesting Tentative Map. The site is approximately 66.5 acres and the applicant is proposing to subdivide the site into 36-parcels. This would result in each building and tenant space being built on a separate lot of record as well as the main drive off Cochrane Road and the two detention ponds along the northern boundary of the site. She indicated that the site would be developed in phases, and separate phased parcel maps would be recorded as the site develops throughout the year(s).
- Conditional Use Permit. The applicant is proposing to replace approximately 6,000 square feet of retail uses with a fuel station, convenience market and a carwash. All of these uses have been identified as conditional uses in the PUD. The applicant is requesting approval of a conditional use permit. She stated that when this application went before the planning commission, a majority of the commissioners felt the uses would be appropriate for a sub regional shopping center. Therefore, the commission is recommending approval of the uses. However, given the fact that a fuel center is not proposed to be developed at this time, the planning commission recommends that the location be subject to review and approval by the architectural review board (ARB) when the applicant is ready to submit a formal application. The planning commission highly recommends that the fuel station not be located along the corner of Mission View and Cochrane Road, nor located along the Cochrane Road project frontage. She indicated that the planning commission recommends approval of the use permit on a 4-2 vote.

- Architectural & Site Review Plan. It was indicated that when the project was reviewed by the ARB, the Board was fully supportive of the project design, including the conceptual site plan, conceptual landscape plan and 6 of the 23 buildings being proposed. The ARB recommends approval of all 6 buildings reviewed; requiring that the final design detail return to a subcommittee of the board for final review and approval. For the other buildings not reviewed by the ARB, a separate application would be required along with formal review and approval by the full Board. The ARB would also review the uniform sign program for the entire shopping center.
- Environmental Review Process. It was indicated that in accordance with state law, an environmental impact report (EIR) was prepared for the project to evaluate any potential environmental impacts that could result from development of the site. A draft EIR was prepared and distributed in July 2005 and a 45-day public review period was provided. During this time, the City received a number of comments from individuals and different agencies. Following the conclusion of the 45-day public review period, City staff took the comments received and provided responses to each comment. The responses to comments were incorporated into the final EIR. She stated that the final EIR identifies that most of the potential impacts anticipated for the development of the site can be mitigated to a less than significant level with implementation and mitigation measures. However, the EIR points out that there are five topics for which significant and unavoidable impacts may occur. These include: agricultural resources, air quality, noise, transportation/circulation, and land use. As significant and unavoidable impacts were identified, the Council will need to adopt a statement of overriding consideration in order to approve the project. She pointed out that one of the items identified as being significant and unavoidable had to do with land use as it relates to Cochrane Plaza. She noted that an economic study was completed as part of the environmental review process, not typical for EIRs. The City implemented this study based on a recent case law that requires a study be conducted. Although the economic study identified that the implementation of the project would result in an impact to Cochrane Plaza, essentially physical urban decay and blight to the center, she stated that it would be difficult to know for certainty whether a project would result in a physical urban decay. Therefore, the EIR took a conservative approach and stated that it will result in a significant and unavoidable impact so that it can be addressed in the EIR.

Director of Business Assistance and Housing Services Toy addressed the development agreement with Morgan Hill Retail Venture LP. He stated that the development agreement and the project implements general plan land use goal #10, sub regional retail development at freeway interchanges. It also implements the economic development strategy goal #1: attract, retain, and expand those businesses that enhance the local economic development base by retaining or generating new sales tax revenue within the community and providing a shopping convenience presently lacking in the community. He noted that Morgan Hill experiences a lot of sales tax leakage with many residents shopping outside of the community. He informed the Council that in 1999, the City commissioned Sedway and Associates to conduct a retail sales leakage analysis for the general plan update. The study estimated that the sales leakage was at \$80 million per year in gross sales volume. In 2005, it is estimated that the sales leakage would be approximately \$160 million per year. It is staff's belief that these numbers show a trend: the

City is experiencing more sales tax leakage now than in prior years. He said that it is important to know that within the City's sale tax data, the City collects sales tax by general retail category and that this category has declined by 19% since 2000. It is staff's belief that the City is experiencing a lot of competition from Gilroy and south San Jose in terms of sales tax dollars.

Mr. Toy stated that the development agreement is needed to memorialize benefits to both parties. He noted that the City entered into development agreements with Morgan Hill Ranch, Madrone Business Parks, Fords, and Dan Gamel RV. These development agreements were tailored to project specific needs. He addressed the incentive package to the developer in order to fill the financing feasibility gap related to land, infrastructure costs and fees. He stated that a consultant group was retained by the City to conduct a financial analysis and it was determined that a gap existed that warranted this level of assistance. He indicated that the total project cost is estimated at \$100 million and that the developer is eligible to receive \$11.5 million in fee waivers, per reimbursements, over 15-years in the proposed financial assistance package. The financial assistance would be given when the developer pulls permits. In return, the City would receive approximately \$34 million in property/sales tax revenues over 15 years. Of this amount, approximately \$1.6 million would come from property taxes. Of the \$34 million, approximately \$26 million would be net new revenue to the City and would provide new shopping amenities/opportunities for the community. Of the \$26 million new revenue, less than half of this amount would be allocated to capital project funds.

Mr. Toy indicated that if the shopping center was in operation today, the project would increase the City's fiscal year 2005-06 sales tax projections of \$5.5 million by approximately 29%, or \$1.6 million. The project would also accelerate the City's opportunities to build City improvements with capital funds. He noted that the project's revenue projections are based on conservative growth estimates of 2%. Therefore, if the project performs better, the City would do better. He identified key points as contained within the development agreement. He indicated that staff recommends approval of the development agreement. He indicated that there are revisions to the development agreement contained in the five page handout presented to the Council this evening as follows:

- Page 4, delete the word "public" in Section 1.6 before "improvements required by the conditions of approval..."
- Page 4 of Exhibit F; revision in Section E(v), to replace "This Section 3.4..." with "This Section 3.E..."
- Addition of Section 4 to Exhibit F to clarify when building permits are to be pulled.
- Addition of Section 5 to Exhibit G to clarify when building permits are to be pulled.

Mr. Toy indicated that there is a clarification to the vesting tentative map: a replacement page 8 to the standard conditions of the vesting tentative map has been provided to the Council that amends Condition H to add "public street and" before "...on-site storm drainage facilities..."

Ms. Tolentino outlined the recommended actions before the City Council this evening as follows: 1) certification of the final EIR. This would include making findings, adopting a statement of overriding consideration, and adopting a mitigation monitoring and reporting program. 2) Adopt resolution for the General Plan Amendment. 3) Introduce ordinance for the zoning amendment with findings to be made

for exceptions to the city-wide PUD standards. 4) Adopt subdivision resolution. 5) Introduce development agreement ordinance. 6) Adopt conditional use permit resolution. 7) Adopt resolution approving the architectural and site plan review application. She informed the City Council that representatives from the environmental consulting firm were in attendance, should the Council have questions.

In response to Mayor Kennedy's question, Ms. Tolentino indicated that a recent trend is to subdivide shopping centers into large number of parcels where each individual business would own a parcel.

Ms. Tolentino addressed the statement of overriding consideration. She clarified that in the resolution certifying the final EIR, it contains a list of overriding considerations outlining economic, social, and employment opportunities that outweigh the significant affects that cannot be mitigated for this project. She referred to page 216 of the agenda packet that lists the statement of overriding consideration. By adopting the statement of overriding consideration, the City is stating that in spite of the environmental impacts, the City believes the overriding considerations justify approval of the project.

Council Member Grzan inquired as to the mitigation measure that would address the loss of agricultural land versus adopting a statement of overriding consideration.

Ms. Tolentino said that it was her understanding that for the agricultural resources impact, there are no feasible mitigation measures that would reduce the impact to a less than significant level. She deferred a clarifying response to the EIR consultants. She informed the Council that there is one other recommended action before the Council that she neglected to mention: The Council direct the City Attorney to return at a future Council meeting with information regarding placing an initiative on the ballot to remove the grocery store restriction on the Cochrane Plaza Shopping Center.

Council Member Carr stated that when the Council approved the existing general plan, this was an area designated for a use similar to the one before the Council. He inquired whether the City adopted statements of overriding consideration for items such as loss of agriculture lands as part of the general plan update.

Ms. Tolentino responded that statements of overriding consideration were adopted as part of the general plan update that included air quality, agricultural resources and a number of other items. She stated that it is not unusual to adopt statements of overriding consideration; particularly given the scale of this project. She said that typical statements of overriding consideration address agricultural resources, air quality, and noise.

Erika Spencer, Pacific Municipal Consultants, addressed the mitigations for agricultural lands. She stated that some communities such as the City of Gilroy have a fee program in place and a classification program where they determine the quality of agricultural land. A fee program is used to mitigate the loss of prime farm land within a particular parcel. As Morgan Hill does not have a program similar to this in place, there are no feasible mitigation measures to be implemented as part of this project.

Director of Community Development Molloy Previsich said that when she looked back at the General Plan and the General Plan EIR for Morgan Hill, it appears that the approach to both of these documents was that Morgan Hill is a city and that it has lands within the urban service area that may have some characteristics that would classify them as prime agricultural land. However, the City does not have an agricultural land use designation and these lands have been designated for urban uses. She said that this particular property has been designated a sub regional commercial shopping center. In 2000, when the general plan was reviewed, along with the analysis, there was a sense that this was a city with urban land uses. Therefore, it was not a significant impact that allowed planning for the development of lands. It was found that when lands developed, it would result in a significant and unavoidable impact and statements of overriding consideration were adopted as part of the general plan. She said that it could be that over the years, there may be a growing sensitivity to the significance that lands may have certain soil characteristics. She noted that the City does not have an agricultural land mitigation program. If this is something the City would be interested in, it would require an analysis, research, study and a determination of what kind of lands Morgan Hill has and how prime they are. She indicated that this EIR took a conservation approach and included the soil characteristics such that land could be used for agricultural purposes and would be converted to urban uses. The City of Morgan Hill does not have a mitigation program and it was determined that mitigations were not feasible. Therefore, the statement of overriding consideration is before the Council with respect to land use that could potentially be used for farming; but are designated and proposed for urban uses.

Mayor Pro Tempore Tate noted that there was an assumption that Phase II would be completed at the end of the second year. If this assumption is made and Phase II develops later, would it influence the assumption negatively?

Mr. Toy noted that the \$11.5 million would be given over time; it would have a lesser value and would result in favor of the City. He said that staff made some basic assumptions as there were many different development scenarios. In some of the scenarios, staff looked at different build out rates. He noted that City assistance is based on pulling building permit fees and the installation of public improvements. For Phase I, waiver of reimbursement impact fees is set at \$5.4 million and at \$3.4 million for Phase II. Phase I would require installation of improvements, and Phase II would require installation of all offsite improvements. Therefore, there are different phases of triggers where staff believes the City would be kept whole in all the various development scenarios.

Council Member Sellers noted that staff indicated the City would receive approximately \$½ million in net new tax dollars over the next 15-years. He indicated the City wants to create a synergy such that existing businesses would have residual benefits as well. He said that this is one of the issues the City tried to address with Cochrane Plaza and the downtown area. It is the City's hope that citizens do not leave town to shop and that they would shop in Morgan Hill. He inquired whether there was any analysis or assumptions performed in this regard that states that even though there may be an overlap of \$½ million per year that there might be a net benefit given the City would see growth in amenities.

Mr. Toy indicated that staff prepared a conservative analysis; basing the analysis on additional square footage related to the project and the backfilling of the Target space. He said that it would be too costly



to perform the quantitative analysis. He said that the consultant or the developer may have additional information relating to synergism.

Korin Crawford, Conley Consultant Group, the firm that conducted the financial analysis to determine whether the level of assistance is warranted, stated that the work they have done in other communities is a generation of change in sales pattern, a generation of additional sales tax dollars/revenues through indirect benefits, and indirect sales through other shops. He said that typically, a more complete/thorough retail study would include the indirect benefits and would look at a change in shopping patterns. He has seen two comparable studies on retail centers conducted in the bay area. One study was conducted in Pinole with the 400,000 square foot Vista Shopping Center. The other study was conducted in conjunction with the shopping center located in East Palo Alto that includes Ikea, Home Depot, and the Expo Design Center. He said that each of these shopping centers had a positive indirect benefit for the existing local businesses and retailers as well as a change in shopping patterns for existing residents. He said that the work done as part of the analysis did not include an analysis of the change in shopping patterns and indirect benefits. He stated that the expenditure potential calculated for Morgan Hill residents was based on county averages. He noted that per capita, Morgan Hill's income is higher than the average in Santa Clara. Therefore, his firm felt there would be a positive benefit from an indirect standpoint.

Mr. Crawford addressed the gap analysis. He stated that when you look at the feasibility of a shopping center as an investment, you look at what you get in terms of revenue/value versus what it costs. If what you get is greater than what it costs, it is a positive surplus of the project. If the value at the end of the day is less than the cost of investment, and what you get is not greater than this amount, an economic gap would result. His firm found that when you look at larger shopping centers (e.g., 300,000-600,000 square feet) they require significant offsite and onsite improvements as well as construction fees. He stated that this development has to install a new road, develop a high quality center, and will be a development that will maintain the environmental integrity of the area with the detention ponds. He indicated that the fee structure in Morgan Hill guarantees quality. All of these things together will make it a high quality and successful center; but will be expensive to build. He informed the Council that based on confidentiality with City staff; he would not be able to identify the existing gap, but that it was above \$15 million.

Council Member Grzan inquired whether Cochrane Plaza would suffer economic difficulties/have problems as a result of this center, or will there be synergy within the center to maintain the Cochrane Plaza as it exists today.

City Manager Tewes informed the Council that staff did not ask the Conley Consultant Group to look at the possible impacts the new center may have on Cochrane Plaza. However, this information is contained in the economic analysis of the EIR. He indicated that the Conley Consultant Group assisted City staff in the negotiations to identify the need for assistance. It has been reported that the assistance gap was greater than what the City is actually providing. The amount the City is providing is on the basis of what staff views would be appropriate in light of the need, and in light of the fact that the City receives benefits from this project.

Mayor Kennedy noted that under the terms of the development agreement, it states that should the developer submit permits for a grocery store of at least 30,000 square feet within six years, the City would increase the amount of fee waiver reimbursement. He inquired whether the City was providing an incentive to bring a grocery store into the shopping center earlier.

Mr. Toy clarified that over the first 10-years, there is an 8.8% limit to the amount of fee waiver reimbursement the developer could receive. However, should the developer bring in a grocery store prior to year six, the City would increase the 8.8% by an amount that equals the difference between the shopping center rate and the grocery store traffic rate. In no case, is the 11.5% overall cap increased. The developer could qualify for additional fee waivers above the 8.8% quicker than waiting until after year 11.

Council Member Grzan said that the developer has an option to construct a grocery store in the center while at the same time the City is asking the City Attorney to prepare an initiative or consider a process that would lift the restrictions on the Cochrane Plaza to add a grocery store as well. He inquired as to the economic ramification(s) of potentially having two grocery stores within the same proximity. What are the economic impacts to Cochrane Plaza as a result of full development of this project?

Mr. Toy felt that in reality, the City would only see one grocery store developed in the area. The incentive would open additional flexibility and opportunities.

Ray Kennedy, senior associate at Bay Area Economics, the firm that conducted the CEQA analysis related to economic impacts, stated that he took a conservative point of view, and that their benchmark for expenditure by residents was conservative. In the end, the Target Store will be going dark. He did not see an immediate demand for the Target space except for an office supply store, and not necessarily for the entire space. He said that there is a risk that some of the other tenants may choose to move as well based on synergy with the Target Store. This is how they reached the finding of urban decay, the physical impact finding for CEQA in the study. The developers will state that there is a possibility of synergy because they are building a beautiful new shopping center across the freeway with potential new tenants. The conservative analysis stipulates that there will be substantial impacts on Cochrane Plaza. He said that there may be a causal chain of stores closing due to competition, relocation of the Target Store, and other stores closing/following Target across the highway. At some point, when you have a center where there is a high level of vacancy, it becomes difficult for the owners of the center to maintain the property because they are not receiving income from it. This is where you start to see urban decay. If damage and vandalism occurs, the property owners may not respond as quickly as they could. It may be that the owners will reach a point where they will give up renting the center because it would not be feasible to do so. This is where some of the mitigations are being suggested in terms of Target looking for another tenant, or code enforcement. In the interest of being conservative, he felt there is a risk of urban decay even with mitigations. There would be some economic lost to the Cochrane Plaza Center owners. He stated that the new center would bring in a certain amount of dollars and the old center would lose some dollars. He indicated that his firm did not analyze the net economic impacts as it was not germane to the physical impacts.

City Manager Tewes said that it would be difficult to attribute economic loss to any single business or center. It was his belief that the tax dollars being generated by Cochrane Plaza is approximately \$400,000 annually, generating approximately \$40 million in taxable sales. He said that based on a conservative analysis, it is an aggregate analysis and not center by center. He stated that the economy is dynamic and businesses change; changing their marketing practices. Staff cannot predict exactly how competition will occur. In the aggregate, this conservative analysis suggests that of the \$34 million over 15 years in gross sales, \$8 million would be transferred from other transactions already occurring in the City.

Council Member Sellers said that in light of the questions he has received from the community and some of the confusion raised with a recent newspaper article, he requested that staff reiterate a couple of the bullet terms. He noted that staff mentioned that the developer would not be exempt from paying sales tax fees. He said that a question has been raised with regards to the cost of the proposed shopping center to the City. He did not believe the City would be writing a check to the developer, or be out money. The deal points would be looking at future revenues and a percentage of those future revenues that are to be shared in order to mitigate some of the expenditures.

Mr. Toy said that \$11.5 million would come to the City in either fee waivers or reimbursement. When the developer pulls building permits, they will notify the City as to whether they want to pay for the permits and then get reimbursed, or whether they would like the City to pay the fees. He stated that there would be no monies paid directly to the developer. The City would be taking the new net sales tax dollars and putting them back into the capital project funds where impact fees would normally be deposited. He informed the Council that the City would be spreading the fees over a 15-year period. He clarified that the improvements are regional improvements and do not go toward offsite improvements.

City Manager Tewes confirmed that the City would be contributing funds toward a variety of capital project funds for facilities of community-wide benefit that the development would otherwise be contributing toward. Fund contributions by the City would be from the gain in sales tax. Therefore, the City would not be writing a check to the developer, the City would be using future income streams generated from the project for these purposes.

Mayor Kennedy disclosed that he met with Mr. Browman, Mr. DiNapoli, Mr. Guglielmo and the representatives from the Cochrane Plaza Shopping Center.

Council Member Carr disclosed that he met with the project applicants: Mr. Browman and Mr. DiNapoli, as well as Mr. Morris, the owner of the Cochrane Plaza Shopping Center.

Council Member Grzan disclosed that he met with Mr. DiNapoli, Mr. Browman and Mr. Guglielmo this past Monday.

Mayor Pro Tempore Tate and Council Member Sellers disclosed that they also met with Mr. Browman, Mr. DiNapoli, Mr. Guglielmo, and representatives from the Cochrane Plaza Shopping Center.

Mayor Kennedy opened the public hearing.

Darryl Browman informed the Council that the project team has been working on this project for over 3 years; with a formal application being filed with the City almost 1½ years ago. Since that time, they have received an incredible amount of community input and scrutiny of the project; attending 4 separate neighborhood meetings, 4 Architectural Review Board (ARB) meetings, an ARB subcommittee meeting; 5 planning commission meetings and the Council meeting this evening. As a result of these 15 meetings, and the amount of comments and changes made to the project, he felt the project has benefited significantly. The Council has an extremely well designed project that includes a site plan that provides numerous gathering opportunities, dining activities and central plazas, extensive landscape buffering, pedestrian linkages that tie the retail buildings throughout the center, and provides a nice atmosphere for individuals to walk and participate in the project. He identified the amenities to be provided (e.g., decorative light poles and paving, etc.). The project also provides an attractive boulevard with architecture that enters an individual into the project. He stated that the design team has indicated a willingness to work with the Valley Transportation Authority (VTA) to bring bus service to the shopping center.

Mr. Browman indicated that this project is a joint venture between the fourth generation Guglielmo family; residents and business owners in Morgan Hill for over 80-years. The second partnership group is the third generation DiNapoli family; also long term property owners in Morgan Hill for over 55-years, one of the larger owners of real estate in Santa Clara County. He indicated that they are not merchant builders, but build and hold development long term. Therefore, this would be a long term partnership. He stated that the management philosophy is one of being aggressive. They have a no tolerance program for graffiti and litter. As projects are developed, they make a diligent effort to take development to the highest level possible. They are taking the time to develop the shopping center; making the project one the community would embrace. He informed the Council that he conducted an inventory and found that out of 25 retail projects the DiNapoli family owns, they are 100% leased. It was his belief that maintaining 100% leasing is accomplished by maintaining good quality projects. It was also his belief that the project has a number of unique benefits for the City: 1) would attract new opportunities for dining in the City (e.g., Chiles, Applebee's, Olive Gardens, etc.); and 2) the project would be important to allow Target to continue to operate in Morgan Hill. He provided the Council with a letter from Target that is part of the EIR as well as the marketing package. He said that Target is not able to continue to operate the current facility in a way they feel brands their store correctly. Target believes that if they are not able to relocate, they may have to close the existing store; having a sales transfer to the Gilroy location or look for other opportunities. He felt it important to realize the economic impact of this project. However, the true economic impact is that by allowing this project to move forward, the City retains Target as a tenant and creates synergies that will allow this particular freeway off ramp to become a dominant retail destination.

Mr. Browman noted that the economic study addressed the leakage of sales tax revenues of approximately \$100-\$160 million in Morgan Hill. With this project, the City has the ability to stem the leakage and create \$1.6 million in additional new sales tax revenues to the City. This equates to approximately 27%-29% increase in sales tax dollars. If you look at fee waivers or incentives necessary to make the project work in 15-years, it would be a net of \$11-\$15.5 million after any adjustments for existing waivers to the City. In year 16, this would equate to \$2 million that would be available to the

City not currently available. He stated that this project would ensure that Morgan Hill attracts a retail destination and shopping facilities. If a project similar to this is not approved in Morgan Hill, it would open the doors to retail shopping centers locating in other areas such as Coyote Valley and the Bailey Avenue off ramp; losing the opportunity for retail to locate north of the City forever. He indicated that this new project would create approximately 750-1,000 new jobs.

Mr. Browman indicated that there was some discussion about the potential damage this project could have on Cochrane Plaza. If Target was to exit this market place, Cochrane Plaza would be in a far worse position, notwithstanding development of this project. He argued that rather than injuring this project, by adding 1 million square feet of retail to the Cochrane/Highway 101 area, you change the character of the City. The City would make the area a regional draw. He noted that the City has a freeway off ramp with over 110,000 cars per day driving by. By allowing the development of the 1 million square foot retail center, the City has taken Cochrane Plaza from a small community-oriented shopping center and turned it into a regional destination. He stated that concerns were raised by the owners of Cochrane Plaza that Target and the parties involved were not aggressively interested in re-leasing their property. He distributed Targets' marketing package for leasing their store. He said that company-wide, Target has 1,400 stores and that there are 17 stores closed at this time. Of these numbers, 9 of these stores are in contract for purchase. The last two stores to close in California were sold within 3 months of closure. He felt that California has been an incredible market place for re-tenanting boxed stores. He noted that it did not take long for the K-mart building to be re-tenanted. He pointed out that Target has also offered to sell the existing store to the Cochrane Plaza owner, Mr. Morris, so that he would be in a position to control the building and his destiny. He noted that the mitigation measures specifically provides that Target would not deed restrict the property against uses; one of the issues identified by Mr. Morris. It was his belief that Target would be aggressively marketing their space based on their marketing plan. He did not believe that Target would want to carry vacant space on the books and would want to make sure the space is re-leased. He noted that Target has signed an exclusive listing agreement with dates when the marketing package is to be released, and what brokers they would be sent to. He said that Mr. Morris suggests the City place a condition on limiting when the building/occupancy permit is to be made available. He said that restrictions such as these should not be applied to retail. He felt that cities need to allow construction to take place; showing individuals that space will be made available and deliverable in a quick time frame. He informed the Council that retailers focus on opportunities that are eminent and do not focus on opportunities that are far into the future. He felt that retail tenants would be focused on this project

Mr. Browman felt the project would be beneficial to the downtown area. He indicated that the types of tenants that locate in the downtown are not the same tenants that would locate in a large retail complex. He said that they have agreed to include kiosks that would mention retailers and activities that are taking place in the downtown. This would allow for cross shopping opportunities. They have offered to conduct a forum where they would attend, as well as three of the top retail brokerage companies that focus on downtown redevelopment, in conjunction with the Chamber of Commerce. This forum would allow discussions on what is necessary to develop the downtown area; focusing on the issues that would make it a long term viable downtown area. He felt that as you market a big project like this one, all retail businesses in Morgan Hill would benefit because you have created a significant exposure to retail in Morgan Hill. He noted that the analysis prepared is extremely conservative and does not address

synergy. There would be cross shopping opportunities in other facilities and that the benefits would be dramatically more. It was his belief that the package of entitlements before the City Council has had an incredible amount of public scrutiny, including 9 public hearings and 15 separate meetings. He stated that the development team was in full agreement with staff's recommended conditions of approval and the resolutions before the Council. He said that the terms and conditions of the development agreement are the minimum that are necessary to make this project a reality, given the high cost of land, fee structure, impact fees, and the extraordinary public improvements that would be necessary. He noted that he has been working on this project for a significant amount of time. He understands the City and their partners, the Guglielmos, have been trying to develop the land for almost 20-years. He felt this would be an incredible project, one that Morgan Hill should embrace. He requested Council approval of this project so that they can achieve a March 2007 opening. In order to meet this opening date, he needs to commence construction no later than March 2006.

John DiNapoli stated that Mr. Browman summarized the project well. He acknowledged that he is a long term player; has been in the community for a long time; and will be the owner/operator of the project. He thanked Bob Engles for his foresight of this project. He requested Council approval of the project.

Gene Guglielmo, speaking on behalf of the Guglielmo family, indicated that his grandparents came to Morgan Hill in 1925, purchased the property on Cochrane Road in the late 1940s and farmed it for many years. As they saw the feasibility for farming deteriorating and the creation of the Cochrane Road Assessment District, it was felt that the ideal use of the property was to develop it. It has been the family's vision to develop the land and be a part of the development. They want to develop a quality project, one that is good for the citizens and the City; a project that everyone can be proud of. He said there were a number of different projects discussed and that obstacles came up; causing some of the projects to fall through. The Guglielmo family is pleased that they were able to put this quality team together. On behalf of the Guglielmo family, he requested the City take advantage of this great opportunity.

Ralph Borelli indicated that he stood in the Council Chambers in 1976 when the Cochrane Road Assessment District was formed and represented the Guglielmo Family, as well as many other members of the Cochrane Road Easterly Association who were against the Cochrane Road Assessment District as the Council provided no assurances to his clients that they would be able to develop their property, even though they would be assessed a millions of dollars to help install the infrastructure that was ultimately used to develop the Morgan Hill Business Park. This is one of the last parcels asking for the ability to develop. He noted that the 20-year bonds have been paid off; all in the interest of providing economic development for the City. He stated that they have worked hard with city staff; noting that it was a long hard road to complete the packet and create the opportunity to put the 66-acres together. He requested Council support of the project.

Tani Perinoni, a 10-year Morgan Hill resident, confirmed that her retail tax dollars are being taken outside of Morgan Hill due to the lack of a regional quality shopping center in this area. In listening to the presentation this evening, it sounds as though this is a tremendous opportunity for the community. From a tax revenue basis, she felt it would lend itself to law enforcement, fire department, libraries and

city services. It was her hope the Council would take serious consideration to the approval of the project; allowing citizens to shop in Morgan Hill.

Art College suggested that this give away is a slap in the face to other developers and established business in the community, as well as the downtown merchants. He noted the City has spent over \$30 million in the downtown trying to revitalize it. Now, the City is reviewing a project and sending a message to its citizens to shop at the shopping center. He felt the development of a shopping center would be pulling sales tax dollars away from the downtown. He did not believe this is what voters want. He understood that meetings were held that only touched approximately 5% of the voters in the community. He noted that when Cochrane Plaza was built, it went to a vote of the people. He felt this shopping center should also go to a vote of the people to determine whether they want to give \$11.5 million in tax monies to this project. He inquired what would happen should Coyote Valley not develop until years down the road. When developed, he felt that Coyote Valley may build their own shopping center and that residents of Coyote Valley would not come to Morgan Hill to shop. He inquired whether there would be bail out assistance to new lease holders in the new shopping center. He did not believe that shoppers in Gilroy and south of Gilroy would rush to shop at the new shopping center. He noted that San Jose has many malls and shopping centers. It was his belief the City would be doing nothing but reshuffling the sales tax dollars in the City, and penalizing the established businesses in Morgan Hill. When the Council gives fees and tax payers' dollars away to a single group, he inquired who would make up the difference. He noted the Council is talking about forgoing monies at this time that could be going into the coffers that would provide police, fire and other services to the community on a gamble. He said that the general fund is already \$1.6 million in the red. He inquired how much more in the red the City would be in with development of this project. If this project is all it is portrayed to be, he did not believe the project needs or deserves a gift from the tax payers in any amount. It was his belief that this would be a bad business decision on the part of the Council. He noted that five pages of revisions were distributed by Mr. Toy and that this packet of information was not made available to the public; a potential violation of the Brown Act which could negate any decisions made by the Council. He also noted that not all of the information was made available via the internet. He felt the Council needs to consider all issues before making a final decision.

Carol Reinhardt, a 21-year Morgan Hill resident, stated that it is a pleasure to see something developed on the east side of Highway 101. He felt that Morgan Hill is trying to be a destination and felt that it needs more than sports complexes. He agreed that shopping dollars need to remain in Morgan Hill, that employment would be enhanced by this particular project, and that it would be a wonderful place to visit. He stated his support of the project. It was his wife's hope that Trader Joes would be a part of this project.

Jim Kirkpatrick stated that he was a member of the Poppy Jasper Film Festival held over the weekend and that it was his belief it was a great success as it brought a lot of individuals to the downtown. He said that the Granada Theater was a part of the Poppy Jasper Film Festival event; one of four venues. The Granada Theater was cleaned up for the Film Festival and looked wonderful. He felt the Granada Theater was the centerpiece of the downtown. It was his understanding that the Granada Theater would be demolished and destroyed, eventually, because a developer owns the property. He does not see the Poppy Jasper Film Festival continuing without the Granada Theater as a downtown venue. He did not

believe there would be synergism when individuals drive down the freeway and shop at the shopping center. He was fearful that dollars would be taken away from the downtown as it was his belief the downtown was going downhill. He inquired what would happen when there are additional dining opportunities near the freeway. He felt a city needs to build from the inside out. Once you develop the outside, he did not believe that development opportunities would come back to the downtown.

Raymonde Etchebarne noted that several individuals drive by past Morgan Hill who do not realize there is a shopping center in Morgan Hill. If individuals see retail shops that attract them, they will realize that there are other shopping opportunities in the community and will patronize them. She felt individuals would also find out about the downtown and patronize these businesses. She stated that she would support the development of the proposed shopping center.

Gary Newquest indicated that he is a 30-year Morgan Hill resident and part owner of an office building in downtown Morgan Hill. As a property owner in the downtown, he sees problems as well as opportunities. He felt that the opportunities are different for the downtown area than what is being described at Cochrane Road. He appreciated that Mr. Browman included the downtown in the overall picture and how they can be brought together. He was confident that should the City add this development on Cochrane Road, it would enhance opportunities for Morgan Hill.

Dennis Brach, a CPA in San Jose and 23-year Morgan Hill resident, stated that he has seen residential development take place, but has not seen retail keep up with residential growth. He felt that this would be a good project for Morgan Hill. He said that he has been acquainted with the DiNapoli family as developer clients since 1969. He said that the DiNapoli family has been honored and recognized by the San Jose Rotary Club for their development activities and what they have done for the City of San Jose. Unlike most developers, they do not sell property. They develop, hold and improve projects. He stated that he would love to see the opportunity for his wife to shop in Morgan Hill. He enjoys dining in Morgan Hill and would like to see more high scaled restaurants locate in Morgan Hill. He requested Council approval of the project as it is long overdue and would add great value to Morgan Hill.

Maria Skovzylas, a 40-year resident of south county, with the last 5-years in Morgan Hill, stated that she was in attendance to become informed; indicating that she has been informed with statistics. If she is interpreting the statistics correctly, it looks as though this project would have a positive affect on Morgan Hill. Although this is going to be a shopping center, it will become a beautiful destination that will provide recreational opportunities. She felt that Morgan Hill citizens need areas to shop as well as a project that will enhance the beauty of the City. She requested the Council consider the project favorably.

Kevin Guertin informed the Council that he is a resident of Mission Ranch, located directly across from the proposed shopping center. He indicated that he attended every meeting held by the proposed builders. He stated that the builders did a great job presenting their proposals and listening to residents' concerns. However, the site plan did not show the proposed assisted living center, nor the 200 families that reside in multi million dollar homes located directly across that would be significantly impacted by noise, traffic, and other concerns. He noted that there has been no mention of the impacts to the quality of life to residents who reside directly across in the Mission Ranch project. He indicated that he and his



family and other families moved to Morgan Hill within the last couple of years; specifically to Mission Ranch, for a better/safer quality of life that is now being threatened to change forever. He felt that Mission Ranch residents would be severely impacted by traffic and noise from Mission View and Cochrane Road. He requested the Council seriously consider its residents' quality of life and the traffic flow to and from Mission Ranch.

Chris Sorci, a 1+ year resident of Mission Ranch, stated that he and his family enjoys this community, but does not know if this would continue if the proposal before the Council is approved. He reviewed the EIR and expressed concern with the plans to relocate the connector street, the traffic flow, and noise issues associated with this project. He also expressed concern with the financial and quality of life impacts that would result to him and his neighbors. He reviewed the transportation, circulation, and noise reports. Under the circulation report, it contains a rating scale that ranges from A-F and rates intersections in Morgan Hill. He noted that the intersection at Cochrane Road and Mission View is rated a B; a good rating. However, after development of the shopping center, it will be rated F according to the chart contained in the report. He indicated that the report included a mitigation plan that states that the mitigation plan increases the size of the intersection, and includes lights and extra lanes to make right/left turns through the intersections. He noted that the intersection would be located approximately 100 feet from his next door neighbor's home and several 100 feet from where he sleeps. He expressed concern with the level of noise to be generated, what his quality of life would be, and the value of his home should he decide to sell it and leave because he does not want to live in the area once it changes. Following the installation of the traffic signal, the report states that the intersection would improve to a D+. He did not find a D+ rating to be acceptable. He said that his backyard was rated at 60 decibels, the maximum acceptable noise level according to Policy 7A of the General Plan. The report also indicates that with the increase in noise and traffic, it will increase by 4-9 decibels. The report also mentions that his six foot sound wall would take into account the changes. It was his belief that noise would be louder and that trucks will turn left near his backyard in order to serve the large project. He stated that he was not opposed to the project, in scope. However, he is opposed to the traffic plan and what the amendment states; moving traffic next to million dollar homes.

Dan Ehlrer, speaking on behalf of the Morgan Hill Chamber of Commerce, informed the Council that at the Board's meeting of Tuesday morning, it voted unanimously to support the Cochrane-DiNapoli-Browman Center project. In doing so, the Board acknowledges that the project presents challenges to some of its members and existing business owners in Morgan Hill. At a time when regional shopping centers in Gilroy continue to expand, a new project of this size, locally, poses additional concerns for established businesses. However, the Board's action reflects its belief that it would be good for Morgan Hill's economic vitality, will bring new businesses/jobs to the community, and will provide the opportunity to create a positive and productive economic synergism that can and would be inclusive of the downtown and other commercial, recreation, and visitor serving areas of Morgan Hill. He said that there is a perception that Morgan Hill "is not opened for business." The perception is that the City is not interested in businesses coming into Morgan Hill. However, perception can become reality. With City Council approval of this project this evening, the City would be sending an important, positive, productive, and beneficial message that Morgan Hill is open for business and is ready and prepared to work toward an economically sustainable community.

Gary Walton, President of the Downtown Association, stated that the Council's agenda packet contained a letter previously sent from the Association. He stated that the Association is not opposed to the new shopping center, but have concerns regarding the EIR and the mitigations relating to the downtown that states a kiosk would offset the loss of shopping. He felt that this retail venue would attract patrons away from the downtown. He felt that it would be nice if the downtown businesses had incentives of the same magnitude that this project is receiving. He stated that suburban retailers are predatory by definition as new malls and big box outlets and other shopping centers are built to steal demand from existing retailers and not to satisfy unmet demands. He indicated that mall designers understand retail and know how to manage their centers. He said that the big problem for most downtowns is that downtown retailers do not know how to compete against shopping centers. He felt that downtown businesses need to have a centralized management, joint advertising, and anchors. A cinema would be an anchor for the downtown. However, if a theater is built in the new shopping center, how would the downtown attract another theater anchor? He said that downtown should also be allowed to give deals to anchors; including relaxation of dimensions for streets and sidewalks. He indicated that shopping centers use kiosks as incubators. He did not believe the downtown has incubators. He did not believe the downtown would perish. He noted that a consultant indicated that the average life span for a shopping center is 18-years. However, downtowns would be around for a long time. He said that property owners cannot build new buildings and rent cheap. He stated that the downtown will be able to compete on the basis of rents as there are a lot of long time property owners. He said that an economist has projected that for every resident in the downtown, they would spend \$8,000-\$10,000 per person. This can equate to \$2.4-\$3 million of potential sales with residential development in the downtown. He felt that downtown businesses need tools to help compete against shopping malls. He requested continued support of the Downtown Association, the preparation of a detailed economic marketing plan, and the employment of consultants that would assist in this effort. He felt that streamlining the permit processing and rezoning land in the downtown would assist in encouraging more businesses to locate in the downtown.

Allen Palmer stated that he was not in attendance to speak for or against the project. He felt that city councils across the country are mesmerized by future tax increases promised by developers to which there are no guarantees. The chart depicted this evening states the City would have a net increase in sales tax of \$25 million over the next 10-years. However, the City will be giving away \$11.5 million in cash that will not come into the City's coffers; using sales taxes to offset this amount. He felt that concessions are generally given to projects to make them viable. A question that needs to be asked is whether this project is so economically precarious that it would collapse for the price of \$11.5 million in concessions. Would this development team be willing to walk away from the project if they do not receive \$11.5 million from the City? He requested the Council give a definitive answer to the question of whether this project is to be exempt for 10-years from all bonds, parcel taxes or any other increases. He requested that the response be included in the minutes. He requested the Council make some considerations for the downtown. He inquired whether competing businesses to the downtown would be allowed in the new shopping center. If so, would the downtown stores that provide similar services be able to survive? He recommended the Council eliminate the concessions.

Joan Sullivan, a 45-year resident and former owner of a portion of the property that has been sold for this shopping center, indicated that she has no interest in the property at this time. She said that the area has developed with many homes and residents since she moved to Morgan Hill. She did not begrudge

anyone moving in around her. She felt it was time to develop this shopping center and looks forward to being able to shop in Morgan Hill. She did not believe the shopping center would be a detriment to the downtown as different kinds of businesses would locate in the shopping center than would locate in the downtown. She looks forward to having the shopping center and a viable downtown.

Laurie Faulk stated that she and many other residents who reside in Morgan Hill shop outside Morgan Hill. She felt it was time to have more shopping opportunities made available in Morgan Hill in order to compete with Gilroy and San Jose. However, she felt that the concerns of families residing adjacent to the proposed shopping center need to be addressed in order to protect their quality of life. If the proposed development is protecting their quality of life, she felt it needs to be better communicated to residents.

Dan Craig, Executive Director for the Downtown Association, felt the downtown is at a crossroad. There are a lot of positive things taking place: there are three rehabilitation projects taking place, leases are in place for most of the new vacancies, there are Measure C applications for over 400 housing units, and as much as 30,000+ square feet in retail space. He said that there is a level of frustration in the downtown; especially with the news that Tinker Toys and the Lovebug stores will be closing and that there are some businesses that are marginal at this time that may not survive. It was his understanding that the downtown is a long term project and that this project sends a message of urgency to the efforts of the downtown. He indicated that the Association is not opposed to this project, and that they hope it succeeds. However, they have concerns about some of the mitigation measures as they do not believe the Council and staff understand that in order for downtown merchants to compete, the downtown needs to move ahead at an accelerated pace. He indicated that these recommendations were spelled out in their comment letter 13. He stated that the Association does not agree with the EIR when it states there will be minimal impacts, addressing specifically urban decay. He noted that it was mentioned that the downtown is a place for lower rents and local entrepreneurs. However, this is not what the Downtown Association wants for the downtown. They would like to see the lease rates go up. It was their belief that urban decay would eventually take place. Should the City move forward with this proposal, particularly with the incentives, he suggested that this becomes the model for projects in the downtown in order to stimulate new development in the downtown.

Khoa Vo, Mission Ranch resident, informed the Council that he attended several public and planning commission meetings where he raised several concerns and issues. He did not believe the concerns of area residents were addressed. He felt that this would be a great project and would bring a lot of improvement to Morgan Hill. However, development of this project does not address the quality of life for the surrounding residential neighborhoods. He expressed concern regarding traffic and noise impacts as well as the impacts associated with quality of life. He felt the EIR is based on a lot of wrong or false assumptions. He did not believe the guidelines were adequate. He noted the City already allocated 400 residential units to this area and did not believe the EIR included this information in the assessment and mitigations. The EIR states that adding 86 units would add 10 seconds to the metering lights at the northbound Highway 101 ramp. He did not know how long traffic would sit from the metering ramp back up to Malaguerra with the addition of 400 residential units. It was his belief the EIR was supposed to address the worst case scenario and did not believe that the mitigation measures were adequate; according to the EIR. He questioned the need for three large signs in this area; noting the shopping

center located across the street only has one large sign for each area to the north and south. He expressed concern with the delivery schedule. He noted that the PUD is requesting a waiver that would allow deliveries to be scheduled between 7 p.m. and 6 a.m., 7 days a week. He did not believe that truck delivery should be allowed in residential areas.

Kirsten Powell, representing the Morris family, owners of the Cochrane Plaza Shopping Center, indicated that she submitted a letter to the Council outlining concerns associated with this project. She stated that these concerns have been expressed to the developer and the planning commission throughout the review of the project. They have questioned the devastating impacts this project would have on retail throughout the city, specifically to Cochrane Plaza. She noted that the EIR addresses this fact and states that it will cause Cochrane Plaza to fall into a devastating cycle of urban decay. She did not believe this was something the Council could ignore or override. She felt the Council needs to give serious thought to this concern in order to protect the retail in place. She stated that the Morris family recognizes the City's desire to bring additional retail to the city, but at what cost? Would approval be worth losing the tenants already at Cochrane Plaza as well as impacting the downtown? She indicated that the letter from Mr. Morris dated November 15, 2005 contains two additional mitigation measures that address specifically the impact that this project would have on Cochrane Plaza. She indicated that they are not trying to prevent the construction of the center, but is asking that Target do what they have agreed to do; lease the space in Cochrane Plaza. She said that meetings and good discussions have been held with Target representatives and the developers, but that they have not received a commitment in writing. She requested the Council add an additional mitigation measure that would help to mitigate the significant impact this project will have on Cochrane Plaza by: 1) limiting the occupancy of the Target space until such time their existing space is rented to a comparable tenant; and 2) that a referendum be placed on the ballot to lift the restriction of a grocery store at Cochrane Plaza. She stated that the Morris family wants to work with the developer and the City. They also want to keep retail within Morgan Hill viable and vital. Considering what the City is doing to bring this project forward in terms of changing the PUD guidelines and giving them \$11 million, she requested the City take similar actions for the retail in place.

Mr. Bowman stated that should the EIR be certified and applied to the project, this would be better than providing something in writing. He noted that he has addressed the concerns raised by the Cochrane Plaza representatives. He confirmed that numerous meetings have been held with Mr. Morris. They would like to make him comfortable with what is taking place. He felt strongly that the best thing that could happen to Cochrane Plaza is a regional project being constructed in this area to change the magnitude of what is taking place. He indicated that Target would not move forward with the project if a condition was added that limits their occupancy. By starting construction and creating activity in this area, it was his belief that the space would be re-leased. He indicated that Target has offered to sell the building to Mr. Morris; allowing him to set his own destiny. He stated that if Mr. Morris is not interested in purchasing the Target building, they would consider purchasing the building as it was his belief that it would be a building that would lease well. He indicated that Target has provided everyone with a marketing program, and have hired one of the best tenant broker representatives in the country to assist them in leasing the building. He felt that Target's marketing efforts alone would generate enough interest in this space. He felt the issue is who is the best tenant for the shopping center for the long term, even if the building needs to sit vacant for a couple of months.

No further comments being offered, the public hearing was closed.

Council Member Grzan requested that staff address all the mitigation issues that were provided to the residents to address their concerns (e.g., noise, traffic, delivery schedule, etc.). He inquired whether further mitigations could be implemented to address residents' concerns.

City Manager Tewes stated that the agreement does not stipulate that the project would be exempt from taxes. This is reflected in the record already and can be found on page 18 of the development agreement.

Jason Nesdahl, Fehr and Peers, indicated that his firm conducted the traffic study for the proposed project. He addressed the mitigation measure for Mission View. In analyzing the project, Mission View and Cochrane Road were left to the current configuration. He said that adding traffic from the project created a significant impact. To mitigate this to an acceptable level would require signalization and widening of the intersection to four lanes with turning lanes from Mission View to Cochrane Road to assist with the project's traffic.

Mayor Kennedy noted that one speaker indicated that his backyard was located within 100 feet from the intersection.

Mr. Nesdahl displayed the lane configuration and the location of the traffic signal. In response to the resident's concern, he stated that noise and traffic is acceptable according to the General Plan with a level of service at D+ with the proposed mitigation. He noted that Monterey Road and Dunne Avenue is at an overall aggregate level of service D+. He said that this would equate to approximately 35-39 seconds of delay for any given vehicle. He stated that this is a weighted average.

Mayor Kennedy inquired what can be done to reduce the noise level to the adjacent housing development.

Ms. Spencer said that they hired a noise consultant to evaluate the noise level under project and cumulative conditions. Based on their analysis, the noise levels at the homes directly southeast along Mission View Drive measured at 54 dba today. With the project, this would increase to 58 dba, below the City's thresholds for single family development. She noted that this would be exterior noise levels along Mission View Drive.

Ms. Tolentino indicated that a PUD guideline was added by the Planning Commission that requires that all truck deliveries are to take place between the hours of 10 p.m. and 6 a.m. and that the trucks must enter and exit through the main project driveway, off Cochrane Road. Therefore, this would eliminate the possibility of trucks traveling along Mission View. She indicated that this additional restriction would reduce the potential noise concern. She informed the Council that a noise level of 65 dba for residential areas would violate the general plan.

Council Member Grzan inquired whether the traffic calculations addressed the 400 potential residential units.

Mr. Nesdahl stated that he ran additional numbers today; adding a growth factor at the study intersection at a conservative 2% per year for 5-years growth under cumulative conditions. He stated that no additional impacts would result and that the level of service would remain at D+ with the additional 400 residential units at this intersection. In order to improve the level of service rating, additional lanes could be added. He noted that Cochrane Road is designated as a six lane facility through Mission View. Adding the through lanes would increase the level of service. Averaging all turning lanes as an aggregate by weight would result in a level of service D+. He clarified that this does not mean that every lane at every moment would result in a 35 second delay.

Council Member Carr said that it was his recollection that there was quite a bit of discussion regarding the level of service as part of the general plan update. He noted that the general plan update task brought forth a recommendation to the Council that it was willing to accept a level of service of D+. If the City did not accept the level of service of D+ at intersections such as Monterey and Dunne, it would require 3 left hand turn lanes, double right turn lanes and massive intersections. These were mitigations the Council was not willing to accept. The Council was willing to accept a couple of seconds of delay by allowing intersections to reach a level of service of D+ versus having massive intersections with multiple light poles. He noted that one of the other traffic issues raised this evening was about the metering ramp at Highway 101 and Cochrane Road. He requested an explanation be given about the metering ramps and their controls.

Mr. Nesdahl stated that he did not analyze the metering ramps. It was his belief that a comment was made by an adjacent resident that by adding 400 residential units to the area, it would increase the amount of delay. He said that approximately 400 single family residential units would result in 400 peak hour trips; indicating that not all of this traffic would be accessing the freeway. He could not quantify what this additional traffic would add to the metering ramps without studying it. He did not believe queuing through the intersection during the peak hours would occur with 400 residential units.

Ms. Tolentino clarified that the 400 residential units being discussed are allotments that have been awarded up to fiscal year 2009-2010 and that these allotments are city-wide. These units would not be located in the project area. She noted that an addendum to the Final EIR specifies that a subsequent analysis included 84-units because these are the number of units in the immediate project area. According to CEQA, staff reviewed what was required and that staff found that it resulted in a timing issue for the signal at the north bound ramp on Cochrane Road. However, she indicated that Caltrans routinely monitors intersections as development occurs, and that it would be a routine procedure to increase the cycle. Therefore, no mitigation is required. She informed the Council that staff calculated the numbers to see what a 2% growth factor would do to the traffic model. It was her belief that VTA standards only require a 1.2% growth factor. Staff took a very conservative approach and added a 2% growth factor and that this did not result in additional mitigation measures (cumulative).

Council Member Grzan addressed the issue of waiving fees. He noted that the applicant is requesting that fees be waived. He inquired whether the fee waiver being requested was known early on in the application process or was it a request that recently occurred.

Mr. Toy said that the developer has always indicated that they thought there was some level of gap to be able to move forward with the project. It was only a few months ago, when the City retained the Conley Consultant Group, that staff started to perform the analysis. He informed the Council that the developer came up with the number that was related to fees and/or offsite improvements. Staff performed additional analysis to narrow the gap. It was only in the last few weeks where staff finalized the development agreement and all key business terms were identified.

Council Member Grzan inquired whether this type of assistance is becoming more and more common, or whether there was a trigger mechanism that results where the City would be approached by other developers for assistance in the future.

Mr. Toy informed the Council that it is not uncommon to provide assistance, noting that the City of San Jose assists industrial projects. Gilroy has provided assistance to retail projects such as Gilroy Crossings and other projects where similar types of transactions were performed. He said that everything is related to a gap analysis and making sure that there is a financial need for the assistance; determining what the level should be so that it is an appropriate one. He indicated that a city is gagging the benefits and costs to the city. However, the benefits have to outweigh the costs of providing the benefits. If no assistance were provided, development would not occur. He said that a gap analysis would occur on a case by case basis. Once this project is in place, it was his belief that the economics for the project would change in terms of sales tax revenue. He stated that there are a lot of variables and that it is hard to state whether the City would be opening itself to assisting other development requests. He said that the City's impact fees are lower than Gilroy's. However, it is important to recognize that Morgan Hill's land value is more than Gilroy. When you have lower land values, you can pay more in fees. Having high land values, the fees would be tacked on to fees.

City Manager Tewes said that over the decades, the City has entered into agreements with businesses that had the potential for significant benefits to the City whereby the City or the Redevelopment Agency has provided some assistance to overcome the gap. Each assistance has been unique as the problems with each development are unique. He said that in this particular instance, it is not unprecedented in the sense that this is the largest project the City has dealt with. It is not unprecedented in the rigor of the analysis and the requirement for the disclosure of the financial data from the proponents. He said that often times, businesses will ask for assistance at the podium. The response is that if a business can demonstrate a benefit to the community and demonstrate a financial gap, the City would be prepared to assist. He informed the Council that oftentimes, businesses are not willing to subject themselves to the rigor of meeting the test. He indicated that this test is required under the law for redevelopment assistance, but is not required under the law for the kind of project being proposed this evening. It is staff's belief that it is an appropriate level of rigor and analysis; thus the reason it was applied in this instance.

Mayor Kennedy reopened the public hearing for the purpose of allowing the project proponent to respond to Council Member Seller's question.

Council Member Sellers noted that the project proponents offered real estate assistance to the downtown. It was his hope that the offer stands and that the project proponents assist with the

coordination of these services. He noted that another element addressed this evening was entertainment. He said that as the downtown exists today; it has a unique entertainment venue and has unique successful restaurants with more being added to the downtown. Also, mentioned was the use of the theater. He indicated that individuals have offered to operate the theater and that the theater has a reluctant leasee/owner who does not want to operate the theater. Thus, the reason the theater is dark today. However, it was his belief that the theater was a vital element for the downtown. In researching this situation, he looked at how a theater business operates. He inquired whether there was an opportunity for everyone to work together where you have screens in the downtown in addition to the screens in the new shopping center; understanding that the City cannot get all the screens on its own because a critical mass does not exist. On the other hand, if screens are placed outside of the downtown, the City will have lost an opportunity.

Mr. Browman noted that they are long term owners and they are concerned with their relationship with the City, long term. He felt there may be the ability to place a littler pressure on a theater operator. You would not get a large theater operator to locate in a downtown as there are usually several constraints. As screens are located in this project, the City could inform the operator that it has two theaters in the downtown they would like the operator to run. A discussion about cross marketing opportunities from both projects is a good idea. However, he could not guarantee that this would be something that would work. He stated that they would be happy to work with the City and the Chamber of Commerce and schedule the forum because he felt it critical for the downtown that guidelines and expectations are set up to help formulate a redevelopment program that in the long run would make it a nice and viable downtown.

Mayor Kennedy closed the public hearing.

Mayor Kennedy said that if you look at the statement of overriding considerations found on page 216 of the agenda packet, it talks about the real benefits of the project. He read some of the statements of overriding consideration proposed for the project.

Council Member Grzan indicated that he and Council Member Carr served on the General Plan Task Force. He stated that the area being considered was a part of the general plan; noting that this plan went through an extensive review process by residents of the community, planning commission, parks and recreation and the Council. It was known that this area would have this type of project years ago. Therefore, he finds it difficult to say “no” to the project as he was a member of the Task Force that approved the general plan, approving the zoning designation for a sub regional shopping center. However, he expressed concern with Cochrane Plaza and did not know how this can be mitigated. He also expressed concern with what the downtown associations are stating. Although they are supportive of this project, he felt they have issues and that that the Council needs to address them soon. He also heard residents expressing concern about noise, traffic, etc. He noted that staff is stating that the impacts are within limits. Therefore, it was his hope the concerns would be mitigated. He stated that the Council will watch the project carefully and that should impacts occur, the City would address them.

Council Member Sellers stated that it is known that there will be issues and concerns individuals will have that the City will not be able to address fully, no matter what the Council decides. He felt the City



has had a good record of mitigating concerns associated with growth, as it occurs. He noted that there were a lot of concerns associated with the approval of the Ford Store and that the City mitigated the concerns. The neighbors have seen far fewer impacts than they were worried would be the case. He said that this project is long time in coming. He indicated that he used to work for a produce market in this area when he was younger and that there was very little development in the area. He stated that he is humbled that he would be assisting in making the decision to approve a quality development. He appreciates the opportunities that have been offered to help mitigate some of the concerns associated with the downtown; using the leverage of significant retailers who have a larger perspective and can bring significant resources to the downtown. He was convinced there is a solution if the City can get the Granada Theater's property owner to bring theater opportunities to the downtown. He felt this would take the efforts of the private sector, property owner, and the Downtown Association. He stated that he would do his part to make this happen.

Council Member Sellers felt that Cochrane Plaza is an issue as well. He indicated that he has been undertaking economic development related issues on and off for the last 15 years in different capacities; currently on the Council. He informed Mr. DiNapoli that this development cannot leave the City with a black hole on the west side of the freeway in order to build a beautiful facility on the east side of the freeway. He has also spoken with the Target representatives as well as the family that owns the facility. He was convinced that the pieces were in place to get the Target building leased. To place the kinds of restrictions being requested would cause Target to pull out. He felt the City has to insist on the highest and best use for that site as it is critical to the City's long term health. By proceeding with Target and insisting that they move forward with locating the best use for the building and with the mitigations identified in the EIR, it will result in a positive outcome.

Council Member Sellers noted that he did not hear a single negative comment, only positive comments, regarding the development itself. He felt that this speaks well of the project, the property owners, and staff who insisted on the highest level of development. He stated that this is a high quality project that would hold the City in good stead for a while. He said that the pedestrian aspect has been made attractive as well as the extensive use of trees that will help mitigate the project. He appreciated the clarification on the traffic issue as it is a concern to everyone. As the City adds development, he felt it important that City staff monitors traffic impacts. He felt that adding 8+ lanes would be a far worse situation. A few seconds would be added to the stop lights at these intersections. Otherwise, he felt the project has been mitigated. Overall, it will take a small leap of faith, but that he was 99% convinced that this was the best thing the City could do for this center. He stated that he is dedicated to making sure that the shopping center is something that Mr. Engles and the community would be proud of.

Mayor Pro Tempore Tate stated that he has studied this project and has reviewed the materials/documents prepared for the project. He did not know what the alternatives would be should the City not proceed with this project. If not approved, it would send a message that the City is not open for business and that it would be kicking its major retailer, Target, out of town because they would not remain in Morgan Hill if this project is not approved. He understands that there would be an impact on Cochrane Plaza and the downtown. However, the City needs to figure a way to address and minimize the impacts. He felt the City would be foolish not to approve and allow this project to proceed.

Council Member Carr stated his appreciation of Council Member Grzan's comments about the general plan update as it was one of the things he was thinking about as well. He noted that the first action the Council has to approve is the EIR for the project. He noted that this area has been sited for a project similar to this one for some time. Members of the general plan task force, including Council Member Tate and planning commissioners, went through an extensive review of different areas in town and how they should be zoned. He indicated that this was an area felt suited for a project like the one before the Council. He was pleased the City is meeting general plan goals this evening. He said that a lot has been said about sales tax and sales tax generation for the City. He said that one of the things that this Council has stated clearly is that it has economic goals for the community; one of which is to generate sales tax. Just as important, is to generate sales tax for general fund revenues by providing shopping opportunities/venues for the residents that are sorely needed. He said the City would like to make sure that there are job opportunities within the community; along with restaurant venues and dining opportunities. He felt this project would be meeting several of these goals. In addition, the project would generate sales tax dollars that would assist in funding police/fire protection and expansion of recreational services. He acknowledged that there are impacts associated with any development. In a community where it prides itself as being a small town in a rural environment, the impacts seem larger to citizens. He felt the City needs to find ways to address the impacts. He said that staff has spent a significant amount of time reviewing this project to look at the impacts and ways to mitigate the impacts. He was satisfied with the answers he has heard this evening.

Council Member Carr noted that there were comments made this evening about economic development and whether Morgan Hill is ready to make a statement that it is truly open for business. He said that he was not always concerned that individuals find the City difficult to work with because what the City finds, as a result of this, is a positive developer who is willing to go the extra mile to build something that everyone can be proud of; like this developer. He did not believe the City's neighbors to the north and south always achieve these results when they open their doors to businesses. They do not hold developers' feet to the fire; find a developer that has a family that has a well known name in the community, and will be in town for generations and generations to come. This would not just be an investment to be sold to the next highest bidder. By the comments heard this evening, the comments seen in the paper and the comments to be seen after tonight's meeting, he felt the developers and property owners of the site understand that there will be requirements to be a good neighbor and good partners in Morgan Hill, working with the City on these items. He was satisfied with the conversation he has had with the developers and property owners who are willing to meet the higher threshold that Morgan Hill residents expect. It is his hope the Council will move forward with approving the project this evening.

Mayor Kennedy indicated that he met with the representatives of Target and that he has been impressed with the representatives as well as their team of brokers who will go out and find retailers who will fill their space. He was also impressed with their success record and their willingness to lease the space. He understood that this is a concern of the Morris family. However, he was satisfied that Target will make this work for the Cochrane Plaza. Therefore, this concern has been met to his satisfaction. With respect to the downtown, he was pleased to hear the commitment from Mr. Browman to work with retailers to work on the downtown and help revitalize it. He noted that the City will be going through a process of extending the Redevelopment Agency where the City can focus more attention on the downtown. He

said that the timing on the sort of investments the City can make in the downtown would be helpful as the City works through this process. He thanked Mr. Browman for this commitment.

Mayor Kennedy addressed another venue for theaters in the downtown. He indicated that he has spoken with the individual who holds the lease for the Granada Theater recently. He stated that the lease holder is committed to keeping the Granada Theater as an entertainment venue and is not interested in tearing it down as mentioned. They have spoken to an individual who is interested in this use. If the City can make this work, it would be a benefit for the downtown. He thanked the Planning Commission, the ARB and City staff for their hard work and the long hours spent in putting this project together. This hard work helps give the Council a better perspective so that it can make an informed decision. He was convinced that this project would be good for Morgan Hill. He felt that Morgan Hill needs to position itself to capture retail businesses being lost to other communities. This project gives the City the opportunity to do this; especially with the likelihood of Coyote Valley developing soon. He indicated that he has seen the Coyote Valley plans and they do not include a major shopping center. The plan is focused on vertical mixed use pedestrian type shopping; a different concept. It was his belief that this project would allow the City to capture some of the future growth of Coyote Valley. He felt that a quality team and a quality project have been put together. He was pleased the City has the DiNapoli, Guglielmo, and Borelli families as well as Mr. Browman and his company in putting this project together. It was his belief that the City has a winning project, is supportive of it, and felt the City needs to move forward.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5957, Certifying the Final Environmental Impact Report, Making Findings, Adopting a Statement of Overriding Considerations, and Adopting a Mitigation Monitoring and Reporting Program.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5958, approving the General Plan Amendment.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1746, New Series, the zoning amendment ordinance.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1746, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, -002, -004, -005 & -007) (ZA-04-12: COCHRANE – DINAPOLI/BROWMAN), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Council Member Carr said that initially, the 36-lot subdivision was a concern to him. He said that the City has had other experiences with shopping centers in town where multiple owners and multiple subdivisions were causing problems as the City tried to redevelop the areas. As this is an owner that wants to own these lots and for other business purposes who wants to proceed with the subdivision, he felt it appropriate in this instance. He did not believe this should be a precedent the City should be setting. He recommended the City give serious consideration to the long term implication to the subdivision and parceling of lots.

Interim City Attorney Siegel indicated that the Council would be approving the vesting tentative map as well. He said that amendments identified by staff were made available this evening and that they were described for the record as to what the changes were. He said that the changes correct a couple of typos and add two conditions relating to ensuring that the developer pulls the development permits.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5959, approving the vesting tentative/subdivision map, as amended by staff.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1747, New Series, the development agreement ordinance.*

Council Member Carr addressed the development agreement as the Council received a lot of comments regarding the agreement. He said that the development agreement is a significant tool for the City as it assists in getting the project the City and the community is looking for. He said that there has been discussion in the newspaper recently, and again this evening, about the incentive program. He felt the City Manager clarified one of the issues raised by an inaccurate story and by someone this evening. He clarified that this was not cash out of the City's pocket. The City is talking about an incentive program that is looking at future sales tax dollars that this site would be generating. The City would be sharing these sales tax revenues in order to pay for some of the fees in place. He said that each Council member has stated how supportive they are of the downtown. He stated that he would continue to support the downtown as a resident and as a consumer. As the holiday season approaches, he felt citizens can make an important statement by shopping downtown.

Mayor Pro Tempore Tate said that a question that keeps coming up on the development agreement is that it is \$11.5 million package and whether this was the best deal the City could make. He did not believe that City staff would bring this proposal to the Council if it was not the best deal. He stated that he has complete faith that this is the best deal the City can get.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1747, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND MORGAN HILL RETAIL VENTURE, LIMITED PARTNERSHIP, FOR CERTAIN REAL PROPERTY CONSISTING OF***

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***APPROXIMATELY 66.5 ACRES LOCATED IN THE CITY OF MORGAN HILL AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (DA-05-11: Cochrane-DiNapoli-Browman), amending the development agreement (exhibit A) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5960, approving the conditional use permit.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5961, approving the architectural and site plans.*

Council Member Grzan said that we talk about Morgan Hill being a business friendly city. He commended staff for their work on this effort. He felt that it should be known that the City has a business-friendly staff that is willing to assist. However, being business friendly does not always mean that the City has money and will waive fees in the future.

Council Member Sellers requested that when the City Attorney and City Clerk return with information regarding a ballot initiative, that staff informs the Council if there are additional costs that are being charged by the Registrar of Voters Office for placing the measure on the ballot. He noted that Target is targeting a March 2006 timeframe to lease their former facility. This would be a helpful timeframe as far as deciding whether or not to place the measure on a June 2006 ballot.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** the City Attorney to Return at a Future City Council Meeting with Information Regarding Placing an Initiative on the Ballot to Remove the Grocery Store Use Restriction from the Cochrane Plaza Planned Unit Development (PUD).*

Mayor Kennedy informed the residents who were concerned about the noise and traffic issues that the City would do its best to mitigate these impacts. He noted the City has a quality developer and competent/qualified staff to work on these concerns. He stated the City would try to make this development as acceptable as possible.

City Manager Tewes stated that it was clear, throughout the discussions about the quality of the project and commitments to investors. He said that City staff made clear what was important to the community and that it was his belief the City and developer were able to come up with a project that meets everyone's objectives. He thanked staff members who worked over a year on this project; including staff members from the Public Works Department; Engineering Staff; Business Assistance & Housing Services Department; Planning Division; Building Division, City Attorney's Office; EIR, traffic, feasibility, and economic consultants; and volunteer citizens who added value to the process (e.g., Planning Commission and Architectural & Review Board). He recognized Rebecca Tolentino, the

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project manager and recently promoted senior planner; and Garrett Toy who assisted on the economic development side.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:47 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *December 7, 2005*

**Agenda Item # 15**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

### **DOWNTOWN ADMINISTRATIVE USE PERMIT FEE AND RESIDENTIAL PRIVATE LIVESTOCK PERMIT FEE**

#### **RECOMMENDED ACTION(S):**

- 1) Open and close Public Hearing
- 2) Adopt Resolution establishing a new Downtown Administrative Use Permit Fee and Residential Private Livestock Permit Fee effective February 6, 2006

#### **EXECUTIVE SUMMARY:**

The Community Development Department has calculated the cost of a new Downtown Administrative Use Permit and new Residential Private Livestock Permit and has determined the amount of fee necessary to recover the full cost incurred by the City.

##### Downtown Administrative Use Permit

On November 2, 2005, the City Council adopted Ordinance Number 1744, N.S. to establish provisions for Downtown Administrative Use Permits, and amended Section 18.24.030 to allow for issuance of such for ground floor office space and personal service uses located along Monterey Road and Third Street. Staff recommends a permit fee in the amount of \$861 (Exhibit A of attached resolution.) Staff estimates 10 hours will be required to complete all tasks required to process permit application. Staff costs are based on the FY05-06 Fully Burdened Hourly rate.

##### Residential Private Livestock Permit

On April 20, 2005, the City Council adopted Ordinance Number 1721, N.S. – Acreage Required For Animals, and Requirement for Residential Private Livestock Permit. The ordinance establishes a fee of \$261 (Exhibit A of attached resolution) to recover 100% of the cost borne by the City to issue the permit. This fee is based on the FY2005-2006 fully burdened hourly rate for Community Development Department staff and includes the cost of all tasks required to process the permit. Staff estimates 3 hours will be required to process the permit from application review to approval/denial letter. The existing fee to appeal the decision of the Community Development Department is \$102.

#### **FISCAL IMPACT:**

The amount of the fee will cover the full costs of processing both of the new permits.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL REVISING FEES AND SERVICE CHARGES  
PURSUANT TO TITLE 3, CHAPTER 3.50, OF THE MORGAN  
HILL MUNICIPAL CODE**

**WHEREAS**, on September 7, 1988, the City Council of the City of Morgan Hill adopted Ordinance No. 880, N.S. codified as Chapter 3.50 of the Morgan Hill Municipal Code, which establishes city policy as to the percentage of the City's costs to be recovered for users of City services; and,

**WHEREAS**, consistent with Chapter 3.50, City policy is to recover the full cost of providing special services of a voluntary and limited nature, in order that general tax monies used to fund services of a broader nature, such as police and fire protection, are not diverted and thereby utilized to unfairly and inequitably fund special services; and,

**WHEREAS**, in order to effectuate its cost recovery policy the City Council has adopted various resolutions setting forth fees and charges; and,

**WHEREAS**, City staff has analyzed the need for establishing a "Downtown Administrative Use Permit Fee" and "Residential Private Livestock Permit Fee" and has made available to the public documentation related to the costs of providing those services and related to the revenues produced by those paying fees and charges for those services; and,

**WHEREAS**, December 7, 2005, the City Council held a noticed public hearing on the fees, and duly considered all written and verbal information presented to it, which testimony and exhibits are here by incorporated into the record of this matter.

**WHEREAS**, the City Council of the City of Morgan Hill based upon all documents, statements and facts known to the City, does hereby resolve:

**SECTION 1. Fee Schedule Adoption.** Based upon the record before it and the findings set forth above, the City Council hereby establishes and adopts the application fees for a Downtown Administrative Use Permit and a Residential Private Livestock Permit as shown on Exhibit A attached hereto. The City Council directs the City Manager to have appropriate City departments apply and collect said fee for identified services.

**SECTION 2. Collection of Fees and Implementation Dates.** The City Council hereby orders that all fees specified in Exhibit A be effective February 6, 2006.

**SECTION 3. Automatic Annual Adjustment.** Each fee referenced in Exhibit A shall be adjusted automatically on July 1 of each fiscal year, beginning on July 1, 2006 by the increase in the Consumer Price Index for Urban Wage Earners, for the year ended in the previous April.



**SECTION 4. Interpretation.** This Resolution may be interpreted by the City Manager. Should there be a conflict in regards to the applicability of the fees, or the charges imposed thereunder, the City Manager is authorized to determine which fee, or combination thereof, should be applied.

**SECTION 5. Severability.** If any portion of this Resolution is declared invalid by a court of competent jurisdiction then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of December, 2005 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**🦉 CERTIFICATION 🦉**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on December 7, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT A**

<b>Service No</b>	<b>Account Number</b>	<b>Service Center</b>	<b>Unit</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
32A	Fund 206 Account 38701	<b><u>Downtown Administrative Use Permit</u></b>	Application	0	\$861
32B	Fund 206 Account 38199	<b><u>Residential Private Livestock Permit</u></b>	Application	0	\$261



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: December 7, 2005**

**Agenda Item # 16**

**Prepared By:**

**Community  
Development  
Director**

**Submitted By:**

**City Manager**

### **DISCUSS DOWNTOWN HOUSING AND MIXED USE DEVELOPMENT PROJECTS IN RELATION TO MEASURE C, AND PROVIDE DIRECTION REGARDING ADVANCING RESIDENTIAL BUILDING ALLOCATIONS FROM 2009-10 AS NEEDED TO COMPLETE PROJECTS**

#### **RECOMMENDED ACTIONS:** By motion:

- (1) Determine that it is necessary to shift 18 available allocations under 2008/09 (3 micro, 4 small project, and 11 open market) to either the 2007/08 or 2008/09 downtown open market competition; and to advance additional allocations from 2009/10 in order to allow for completion of projects that receive passing scores in the affordable, small vertical mixed use, and affordable competitions; and direct that the Planning Commission consider the following as available for allocation from 2009/10:
  - a) **AFFORDABLE:** Advance up to 34 allocations from 2009/10, to either 2007/08 or 2008/09 as needed to complete the affordable housing projects which attain a passing score.
  - b) **SMALL VERTICAL MIXED USE:** Advance up to 4 allocations from 2009/10, to either 2007/08 or 2008/09 as needed to complete the vertical mixed use projects which attain a passing score.
  - c) **DOWNTOWN OPEN MARKET:** Advance from 108 to 193 allocations from 2009/10, to either 2007/08 or 2008/09 as needed to complete the downtown projects which attain a passing score.
- (2) Direct the Planning Commission, if it advances allocations, to make specific findings for each project regarding the infeasibility of phasing and necessity to advance allocations in order to feasibly complete projects.
- (3) Direct the Community and Economic Development Council Subcommittee to return to the full City Council by March 1, 2006 with information and a recommendation regarding a possible ballot measure to modify Measure C provisions applicable to downtown and vertical mixed use projects, to allow for these types of projects to be initiated and completed on an expedited basis, and to allow for "restoration" of any advanced allocations for these competitions to be restored as available for allocation for 2009/10.

**EXECUTIVE SUMMARY:** Measure C includes provisions which support an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, provide market support for new businesses, and establish a viable downtown neighborhood. Measure C requires reservation of a certain number of allotments for the downtown area through 2010.

Section 18.78.030 (C) of the RDCS ordinance provides that "... The city council may, if it chooses, further divide the allotments according to *geography*, price, development size, phasing, including the *number of units* and *timing of allocations required to complete a project*, and similar criteria as deemed necessary to provide for the general welfare."

The above-recommended actions would provide the Planning Commission with discretion to advance allocations as may be needed to award allocations to passing projects, upon making specific findings for each project. The attached memos provide additional information regarding this matter.

**FISCAL/RESOURCE IMPACT:** Development review is applicant-funded; no fiscal impact. Consolidation of environmental review for passing projects should result in lesser costs for applicants.



## MEMORANDUM

**To: ED TEWES, CITY MANAGER**

**From: COMMUNITY DEVELOPMENT DEPARTMENT**

**Date: DECEMBER 1, 2005**

**Subject: RATIONALE FOR AND POSSIBLE EFFECTS OF ADVANCING MEASURE C ALLOCATIONS FROM 2009/10 FOR AFFORDABLE, VERTICAL MIXED USE AND DOWNTOWN OPEN MARKET COMPETITIONS**

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### **RATIONALE FOR SHIFTING AND ADVANCING ALLOCATIONS**

The nature of higher density residential, affordable housing, and mixed use projects, including but not limited to the facts that the projects are usually attached, and that lenders typically fund the entirety of these projects rather than phases, can mean that it is necessary to advance the timing of allocations so that these types of projects may be initiated and completed. While developers are able to successfully work under Measure C to finance and construct single family homes, this is often not possible for the higher density, affordable and downtown housing products. Higher density, market rate housing projects are relatively new in Morgan Hill, and lenders may consider them higher risk. Therefore, lenders made need certainty that the entirety of a project will be allocated, even though it may be constructed in phases. It can still be difficult to find lenders willing to finance mixed use projects, and it is not usually feasible to phase mixed use projects. Funding for affordable housing projects is a complex undertaking usually involving multiple funding sources each with performance deadlines, and again it is usually necessary to have certainty that the whole project has obtained allocations, and phasing might not be feasible for certain affordable housing projects. The City Council has advanced allocations from “third years” in the past in order to allow for completion of projects.

Measure C includes provisions which support an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, provide market support for new businesses, and establish a viable downtown neighborhood. Measure C requires reservation of a certain number of allotments for the downtown area through 2010. Section 18.78.030 (C) of the RDCS ordinance provides that “... The city council may, if it chooses, further divide the allotments according to *geography*, price, development size, phasing, including the *number of units* and *timing of allocations required to complete a project*, and similar criteria as deemed necessary to provide for the general welfare.” Staff is forwarding a recommendation to the City Council for its December 7<sup>th</sup> meeting, that the Council provide the Planning Commission with authorization to advance allocations from 2009-10 as may be necessary for downtown, affordable and vertical mixed use projects which receive a passing score, based upon making findings specific to each project regarding the necessity for advancing the timing of allocations.

There are 18 allocations that were not awarded in the most recent Measure C competitions, under the 2008/09 timeframe. These allocations must be awarded by March of 2007, which would usually mean a Fall 2006 filing date for the following: 3 Micro units, 4 Small Project units, 11 Open Market units. Rather than hold Fall 2006 competitions for these limited numbers, staff suggests that these allocations be re-assigned to the Downtown Open Market category, which means that fewer 2009/10 units would need to be advanced.



## MEMORANDUM

**To: ED TEWES, CITY MANAGER**  
**From: COMMUNITY DEVELOPMENT DEPARTMENT**  
**Date: DECEMBER 1, 2005**  
**Subject: PRELIMINARY SCORING OF MEASURE C APPLICATIONS**

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Staff has completed the preliminary scoring of applications for Measure C allocations. Applicants were mailed these preliminary results on Wednesday, November 23, 2005. The preliminary point scores are as follows:

**AFFORDABLE** **110 allocations available for Two-Year 07/08 & 08/09 Period**

*150 Points is the Minimum Passing Score for the Affordable Category*

MC-05-02: Jarvis-South County Housing	95 Units	177.5 Points	PASS
MC-05-09: Central-Urban Communities Housing	49 Units	157.5 Points	PASS

Would need to advance 34 allocations from 09/10 to fully allocate/complete both affordable projects.

**SMALL VERTICAL MIXED USE** **30 allocations available for Two-Year 07/08 & 08/09 Period**

MC-05-12: Depot-Granary	12 units	166.5 Points	PASS
MC-05-04: Monterey-Sherman House	7 units	160 Points	PASS

*Below Minimum Passing Score of 160 Points for this Category:*

MC-05-03: Monterey-Gunter	15 units	153.5 Points	NOT PASS
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Enough allocations available to fully allocate 2 passing projects; the one remaining 07/08 allocation could result in another Vertical Mixed Use Competition in Fall 2006 to allow Gunter to re-compete. If Gunter passes either this year or next year, then it would need 4 allocations from 09/10 to be fully allocated.

**DOWNTOWN OPEN MARKET** **120 allocations available for Two-Year 07/08 & 08/09 Period**

MC-05-05: Monterey-Alcini	30 units	176 Points	PASS
MC-05-08: Diana-EAH, Inc.	80 units	173.5 Points	PASS
MC-05-06: E. Main-Ahlin	136 units	163.5 Points	PASS
<i>Below Minimum Passing Score of 160 Points for this Category:</i>			
MC-05-07: Myrtle-Latala	5(6) units	155 Points	NOT PASS
MC-05-11: E. Third-Glenrock	57 units	151.5 Points	NOT PASS
MC-05-10: E. First-Shiraz	23 units	145 Points	NOT PASS

Would need to advance 126 allocations from 09/10 to fully allocate/complete the three passing downtown projects. If point adjustments during the process result in more passing projects, then additional advance allocations from 09/10 would be necessary, with the number dependent on phasing opportunities and/or constraints.

**At the City Council meeting of December 7, 2005, the Council will consider the matter of advancing allocations from 09/10, as may be needed to complete projects. Applicants will have the opportunity to submit written comments on the preliminary scoring to staff and the Planning Commission in advance of the December 13, 2005 hearing. Further review may result in adjustments to the point scores, and any adjustments to the scores will be presented to the Planning Commission for its final scoring on January 10, 2006. Applicants would have the right to appeal to the City Council (appeals would be heard on February 1, 2006), with the Commission awarding final allocations on February 14, 2006.**

	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY2008-09</u></b>	<b><u>TOTAL</u></b>
<b><u>MICRO COMPETITION:</u></b>				
<i>MMP-03-09: W. Main – Vierra</i>	4			4
MMC-04-05: Del Monte-Giovani	6			6
MMC-04-06: San Pedro-Ahmadi	1			1
MMC-04-07: Ginger-Custom One	5			5
MMC-04-10: E. Dunne-Kruse	3			3
MMC-04-09: Taylor-Murray		2	3	5
Unallocated:			3	3
<b><u>SMALL PROJECT COMPETITION:</u></b>				
<i>MP-03-04: Cochrane – Borello</i>	7			7
MC-04-17: San Pedro-Alcini		4	8	12
MC-04-27: Wright-Dividend	6	9		15
Unallocated:			4	4
<b><u>OPEN MARKET COMPETITION:</u></b>				
<i>MP-02-03: Tilton – Glenrock/Shea</i>	20	15	15	50
<i>MP-02-12: Peet – Lupine Investors</i>	12			12
<i>MP-02-14: Cochrane – Coyote Estates</i>	20			20
<i>MP-02-15: Mission View – Mission Ranch</i>	12			12
MC-04-04: Diana – Chan		13	5	18
MC-04-12: E. Dunne - Dempsey	13	5	8	26
MC-04-13: Barrett – Odishoo	13	5	13	31
MC-04-14: Central – Hu	19	5	15	39
MC-04-15: Church – Alcini	14			14
MC-04-19: E. Main – Thrust	13	5	8	26
MC-04-21: Barrett-Syncon Homes		13	5	18
MC-04-22: Jarvis – So. Valley Developers	36	13	15	64
MC-04-25: Peet – Lupine Investors	18	6	12	36
MC-04-26: Mission View – Mission Ranch	18	15	15	48
Unallocated:			11	11
<b><u>VERTICAL MIXED USE:</u></b>				
Unallocated:	10	10	10	30
<b><u>AFFORDABLE COMPETITION:</u></b>				
Unallocated:		50	60	110
<b><u>DOWNTOWN AREA OPEN MARKET:</u></b>				
Unallocated:		80	40	120
Totals	<u>250</u>	<u>250</u>	<u>250</u>	<u>750</u>



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: December 7, 2005**

Agenda Item # 17

Prepared By:

Special Assistant to the  
City Manager

Submitted By:

City Manager

### **CITY OF SAN JOSE'S NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE MONTEREY HIGHWAY SOCCER COMPLEX**

#### **RECOMMENDED ACTION(S):**

Provide Direction to staff

1. Should comments be forwarded to the City of San Jose  
-Or-
2. Not comment on the Notice of Preparation and wait for the opportunity to comment on the draft Environmental Impact Report. -and-
3. Assign a Council Sub-Committee with responsibility for monitoring this project's progress

#### **EXECUTIVE SUMMARY:**

The City of San Jose has issued a Notice of Preparation of an Environmental Impact Report for the Monterey Highway Soccer Complex. The purpose of the development of the complex is to develop soccer fields for use by local sports leagues and the City of San Jose. The complex is being proposed with 8 soccer fields on the 72.7 acre parcel located on the greenbelt area adjacent to Sobrato High School. The project also proposes 593 parking spaces with 277 overflow parking spaces provided on the school property, concession and restroom facilities, maintenance yard, entry building, tournament offices and storage facilities all to be modular in type. All facilities are to be temporary. Soccer fields are to be turf grass and irrigated.

Staff has received no formal Council direction on the City's role with the Monterey Highway Soccer Field complex after the former non-profit San Jose Soccer Foundation Group left the project and the funding was returned to the Redevelopment Agency Project Budget. The City of San Jose has continued with the project design as a community based recreational-park facility.

In review of the NOP, staff has the following comments:

1. Opportunity for alternative programming: tournament play support would require more than 8 fields at that location and the first proposal of the site displayed 16 fields.
2. Review of opportunity for joint use of resources with Schools should be explored such as parking, drainage, water lines.
3. Scheduling impact of soccer complex activities and school activities.
4. Programming detail on the proposed uses of the 12,000 sq.ft. Plaza/Group Assembly/Picnic Space. There is concern that the Plaza cannot be supported without utility hook ups unless greenbelt standards are being relaxed. 12,000 sq. ft. plaza group assembly picnic space appears to accommodate a great number of people. What other uses are proposed for this group meeting site besides casual soccer team/participant gatherings?
5. Review of traffic impacts to the City of Morgan Hill

**FISCAL IMPACT:** Undetermined at this time.



**CITY COUNCIL/REDEVELOPMENT  
AGENCY STAFF REPORT**

**MEETING DATE:** December 7, 2005

**SELECTION OF CITY COUNCIL MAYOR PRO TEMPORE AND  
REDEVELOPMENT AGENCY VICE-CHAIR**

**RECOMMENDED ACTIONS:**

- 1) **Open floor to nomination(s) for Mayor Pro Tempore/Vice-Chair**
- 2) **Select Council/Agency Member to serve as Mayor Pro Tempore/Vice-Chair per City Council Policy**

**EXECUTIVE SUMMARY:**

This item was scheduled for City Council/Redevelopment Agency consideration on November 30, 2005. At the request of Mayor/Chairman Kennedy, the item was continued to the December 7, 2005 meeting in order to allow the Mayor/Chairman the opportunity to participate in the Mayor/Vice-chair selection process.

**City Council**

The City Council has an adopted policy in place which sets forth the criteria for the selection of Mayor Pro Tempore annually for a one-year term. The adopted policy is intended to provide every Council Member with the opportunity to serve as Mayor Pro Tempore. Nomination for the Mayor Pro Tempore seat is to be made on the basis of the length of time that an individual has served on the City Council and whether or not the nominee has previously had the opportunity to serve as Mayor Pro Tempore. The Mayor or any member of the City Council may nominate a member to serve as Mayor Pro Tempore. A copy of the Policy is attached.

All Council Members have had the opportunity to serve as Mayor Pro Tempore with the exception of Council Member Grzan. (See attached table for rotation terms.) The Council Member selected to serve as Mayor Pro Tempore will serve for a one year term from December 1, 2005 through the first regular meeting of the City Council held after the General Municipal Election and after the new members have been sworn in (December 2006), per the adopted Council policy.

**Redevelopment Agency**

The current Bylaws of the Redevelopment Agency stipulate that a "Vice-chairperson shall be appointed annually by a majority vote of the Agency Commissioners . . ." The Bylaws do not stipulate that every Commissioner shall be afforded the opportunity to serve as Vice-chairperson. The Redevelopment Agency Commission typically appoints a Vice-chair at the same meeting that the Mayor Pro Tempore is appointed.

Agency Members Carr, Sellers and Tate have had the opportunity to serve terms as Vice-chair to the Redevelopment Agency Commission (see attached table for rotation schedule). Agency Member Grzan has not had the opportunity to serve as Vice-chair.

On August 24, 2005, the City Council/Redevelopment Agency amended City Council Policy No. 99-01, Selection of Mayor Pro Tempore, to stipulate that the Council Member selected to serve as Mayor Pro Tempore shall also be the individual selected to serve as the Redevelopment Agency's Vice-chair, in order to maintain continuity and avoid confusion as to who would be overseeing joint meetings in the absence of the Mayor/Chairman.

**City Council/Redevelopment Agency**

Council Policy, CP-99-01 states that the selection of Mayor Pro Tempore is to occur at the first regular meeting of the City Council held after the general municipal election, or at the second regular meeting in November in each year that a general municipal election is not held. The selection of Mayor Pro Tempore/Vice-chair was deferred from the Council's second meeting in November (11/16/05) and is being scheduled Council action at the November 30, 2005 special meeting. It is recommended that the City Council/Agency Commission select, by majority vote, a Council/Agency Member to serve as Mayor Pro Tempore/Vice-chair for a one-year term, ending after certification of the General Municipal Election (December 2006).

**FISCAL IMPACT:** No Fiscal Impact.

**Agenda Item # 18**

**Prepared/Approved  
By:**

**Council Services &  
Records Manager/City  
Clerk**

**Submitted By:**

**City Manager**



**CITY COUNCIL  
MAYOR PRO TEMPORE ROTATION**

	<b><i>From:</i></b>	<b><i>To:</i></b>
Council Member Tate	January 19, 2000	December 6, 2000
Council Member Sellers	December 6, 2000	December 12, 2001
Council Member Carr	December 12, 2001	December 14, 2002
Council Member Chang	December 14, 2002	December 10, 2003
Council Member Sellers	December 10, 2003	December 15, 2004
Council Member Tate	December 15, 2005	December 1, 2005
Council Member Grzan	Has not served in this capacity	

**REDEVELOPMENT AGENCY  
VICE-CHAIR ROTATION**

	<b><i>From:</i></b>	<b><i>To:</i></b>
Agency Member Sellers	January 19, 2000	December 6, 2000
Agency Member Carr	December 6, 2000	December 12, 2001
Agency Member Chang	December 12, 2001	December 4, 2002
Agency Member Chang	December 4, 2002	December 10, 2003
Agency Member Sellers	December 10, 2003	December 15, 2004
Agency Member Tate	December 15, 2005	December 1, 2005
Agency Member Grzan	Has not served in this capacity	